Alabama Fair Campaign Practices Act
2014 Election Cycle Update

presented by:
Alabama Secretary of State
Alabama Law Institute
Alabama State Bar

FCPA REFERENCE MATERIALS
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Updated for Alabama State Bar Annual Meeting
July 17-20, 2013
Point Clear, Alabama

Alabama State Bar
Lawyers Render Service

Summary of FCPA Revisions Since 2010

Summary of FCPA Revisions from 2010 to 2013 Legislative Sessions[1]

1. **PAC-to-PAC Ban** – During the 2010 Special Session, the Legislature generally banned political action committees (PACs) from contributing or transferring funds to any other PAC except for transfers from a PAC to a principal campaign committee (PCC). Additional revisions to this prohibition have been enacted in subsequent legislative sessions.

   - **Prohibited Contributions and Expenditures** – The 2010 revisions made it unlawful for any PAC (including a PCC) or a Section 527 political organization to make a "contribution, expenditure, or any other transfer of funds" to any other PAC or 527 organization.

   - **Private Foundations** – The 2010 revisions also included "private foundations" within the above restrictions on contributions and expenditures; however, the inclusion of this provision had the unintended consequence of prohibiting this subset of charitable foundations from donating to each other. "Private foundations" are a subset of 501(c)(3) charities that are severely restricted by federal tax law in their ability to participate in in political campaigns. A 2013 amendment to the FCPA deletes this reference to "private foundations" in the PAC-to-PAC ban.

   - **Permitted Contributions and Expenditures** – Under the 2010 revisions, a PAC that is not a PCC may make contributions to a candidate's PCC. In addition, another exception permits a PCC to transfer funds to the same person's PCC for another state office. For example, a State Representative running for Governor would be permitted to transfer funds from his State Representative campaign committee to his gubernatorial campaign committee.

   - **Candidates Contributions/Payments to Political Parties** – The PAC-to-PAC ban also prohibits a candidate's PCC from contributing or transferring funds to a PAC or to another candidate's PCC. There is a limited exception to this restriction that permits a PCC to contribute funds to a political party (which is, by definition, a PAC under the FCPA) for qualifying fees. In addition, under the 2010 revisions, a PCC could also expend up to $5,000 of campaign funds during the term of office for: (1) tickets to political party dinners and functions, and (2) state and local political party dues or similar expenses incurred by independent or write-in candidates. During the 2013 Session, the Legislature amended this provision to provide that the $5,000 allowance for such political party expenditures applies over a two-year period (from one November general election to the next). The 2013 revision prevents any discrepancy between office holders whose terms of office are for six years versus those with four-year terms.

[1] As described in this summary, the 2013 revisions to the FCPA have an effective date of **August 1, 2013**.

- **Use of Funds Raised by a Federal Candidate** – The 2010 revisions include restrictions on a candidate's PCC receiving (or spending) funds that were raised by a federal candidate's campaign committee. According to the Secretary of State's guidance, a PCC may not receive (or spend) more than $1,000 in campaign funds that were raised by a federal candidate's campaign committee.

- **Corporation and Association PACs** – As originally enacted in 2010, the PAC-to-PAC ban did not affect a provision in Title 10A (the business entities code) that arguably permitted certain corporate and association PACs (separate, segregated funds) to transfer funds among themselves. The 2013 revisions to the FCPA remove the language that may have permitted those types of transfers.

2. **Schedule for Campaign Finance Disclosure Reports** – Under the 2011 revisions to the FCPA, PCCs and PACs are required to file many more campaign finance disclosure reports and must now do so on an annual, monthly, weekly, and (in some cases) daily basis. The 2012 revisions further modified the requirements for filing these reports in the 2014 election cycle when electronic filing will be in place and eliminated some duplicative, overlapping reporting obligations. The 2013 revisions implement additional technical changes including some regarding the duplicative reporting schedule.

   - **Monthly Reports** – For the 12 months prior to the date of an election, monthly reports must be filed by a PCC or PAC that makes a contribution or expenditure "with a view toward influencing an election's results." Reports covering each month are due on the second business day of the subsequent month.

   - **Weekly Reports** – For the four weeks prior to an election, weekly reports covering each week must be filed on Monday of the following week. In addition, the 2013 revisions make clear that a candidate or PAC that is required to file a *weekly* report during a certain period is not also required to file a *monthly* report in the month in which the election is held. This will eliminate a duplicative filing.

   - **Daily Reports** – For the eight days preceding a legislative, state school board, or statewide election, reports must be filed by a PCC or PAC if it receives or spends an aggregate of $5,000 or more in a single day. Once a PCC or PAC files a daily report it must continue filing daily reports through the remainder of the cycle. Daily reports must include all activity occurring on the day of the report. In addition, the 2012 revisions make clear that a candidate or PAC that is required to file a daily report for a particular day is not also required to file a *weekly* report for the week preceding the election. The 2013 revisions modified the deadline for the final daily report that is due the day before an election so that it will now be due by 12:01 p.m. (just after noon) on the Monday preceding an election (instead of after midnight on that Monday at 12:01 a.m).

   - **Annual Report** – The 2013 revisions add to the 2012 revisions to make clear that a PCC or PAC that is required to file a monthly report during a certain period is not also required to file an *annual* report in the year in which the election is held. This will eliminate a duplicative filing where an annual report is filed within days of a monthly

report. Without this revision, candidates would not have been required to file annual reports following an election.

- **Special Reports** – Under the 2011 revisions, contributions of $20,000 or more must be reported within two business days of receiving the contribution.

- **Electronic Reporting** – The 2011 revisions require that beginning with the 2014 election cycle, disclosure reports for candidates who file with the Secretary of State must be filed electronically on the new system that the Secretary of State has developed.

- **Designated Filing Agents** – The 2013 revisions authorized a PCC or PAC to identify a "designated filing agent" who can electronically file submit FCPA reports for the PCC or PAC. This revision will assist candidates as the electronic reporting system is implemented during the 2014 cycle.

3. **Disclosure Associated with "Electioneering Communications"** – Under the 2011 revisions to the FCPA, disclosure requirements for "electioneering communications" (modeled to some extent on federal election law requirements) were added to the to the FCPA.

   - **Electioneering Communications Defined** – An "electioneering communication" is defined as any broadcast, electronic, or print communication that contains the name or image of a candidate, that occurs within 120 days of an election, is intended to influence the outcome of the election, and costs more than $1,000.

   - **Disclosure Obligation** – For any electioneering communication, the payor must file a disclosure report with the Secretary of State as if it were a PAC.

   - **Exemptions** – These provisions include exemptions for churches and trade associations communicating with members. Under the 2013 revisions, exemptions were added for employers communicating with their employees, their stockholders, or the families of employees or stockholders.

   - **Disclaimers** – Electioneering communications appearing in any print media or broadcast must clearly identify the entity responsible for paying for the communication. There are specific exclusions from this requirement for various enumerated items such as those designed to be worn, placed as a graphic or picture link where compliance is impractical due to the image's size, distributed on a social networking site, or sent in a text message.

4. **Robocall Disclosure and Source Identification** – Under the 2012 revisions to the FCPA, it is unlawful for an "automated or pre-recorded communication … transmitted through an automated telephone dialing service" (such as a "robocall") to be conducted without providing clear notice at the end of the communication that it was a paid political advertisement and identifying the person or entity that paid for the communication. The revisions also made it unlawful for a person or entity to knowingly misrepresent the person or entity that paid for such an automated or pre-recorded communication.

5. **Enforcement Provisions** – The 2013 revisions substantially revised the enforcement provisions of the FCPA. ***These revisions take effect on August 1, 2013.***

- **Intent** – Prior to the 2013 revisions, many of the criminal violations in the FCPA did not include any requirement that there be intent on the part of the person acting. The 2013 revisions make clear that violations must now be intentional in order to be prosecuted.

- **Administrative Fine System** – Under the previous law, there was little enforcement of the requirement to file the various reports required under the FCPA on time or accurately other than a separate provision that could have a candidate removed from the ballot (or out of office) if they did not cure the problem before the election. The 2013 revisions included an administrative enforcement scheme with fines for minor violations and criminal penalties for intentional violations. Fines are paid to the county or to the state General Fund (and not to the filing official). Additionally, a candidate or PAC is permitted to correct an otherwise timely filed report so long as it is initiated by the filer (as opposed to the filing official) and corrected prior to the election. The administrative fine schedule is below:

    - 1st offense = Greater of $300 or 10% of amount not reported
    - 2nd offense = Greater of $600 or 15% of amount not reported
    - 3rd and subsequent offenses = Greater of $1,200 or 20% of amount not reported
    - 4th offense establishes rebuttable presumption of intent necessary for criminal violation

- **Clarifies Person Responsible for Compliance** – The 2013 revisions make clear that a candidate or PAC treasurer is the person responsible for making the filings required by the FCPA.

- **Enforcement for out of state violators** – The 2013 revisions establish the venue for the prosecution of out-of-state violators and violations as being in Montgomery County.

- **Repeals so-called candidate "death penalty"** – The so-called candidate "death penalty" for errors in filing is repealed under the 2013 revisions.

6. **Other 2013 FCPA Revisions** – A number of other revisions were made to the FCPA in 2013. ***These revisions take effect on August 1, 2013.***

- **Candidate Registration Thresholds** – The 2013 revisions require any candidate who raises or expends $1,000 to begin filing disclosure reports. Previously, there was a wide variety of thresholds (*e.g.*, $25,000 for state office other than circuit or district, $5,000 for circuit or district office, $10,000 for Senate, $5,000 for House, $1,000 for local). Under the 2013 revisions, there is a now a uniform threshold of $1,000 for all candidates for any office, which will result in most candidates filing disclosure reports earlier in the process.

- **Repeal of Corporate Contribution Limit** – The FCPA now permits corporations to be regulated in the same manner as other entities (*e.g.*, LLCs and partnerships) and

individuals by removing restrictions (such as the $500 corporate contribution limit). However, utilities may not contribute to any candidate for the PSC.

- **Corporate / Association PACs –** A separate code section in Title 10A (the business entities code) that addressed how corporations and associations may establish separate, segregated funds (SSFs) for political participation moved into the FCPA (in Title 17) and a few clean-up revisions were made to that section including the deletion of the authorization of transfers between SSFs.

- **Legislative Caucuses** – Legislative caucuses have existed for many years without any specific provisions of law for identifying them or their purposes. In the past, some caucuses that attempted to specifically influence elections actually became PACs by operation of law. Today, caucuses are more likely to be organized as nonprofits and focus on policy issues. The 2013 revisions provide for the registration of caucuses and prevents them from working to influence elections if they are so registered. In addition, candidates are permitted to give excess campaign funds to a legislative caucus, but this may only be done if the caucus is registered and if the caucus does not attempt to influence the outcome of elections.

- **Fundraising Blackout** – The legislative fundraising blackout has been changed to apply only to legislative and statewide candidates. Previously, the campaign fundraising blackout period during the legislative session had applied to legislators and statewide candidates as well as to candidates for "state offices" which under the FCPA included positions such as circuit and district judges, circuit clerks, and district attorneys who have nothing to do with the legislative process.

- **Refund of Contributions** –The FCPA now clearly allows for the return or refund of campaign contributions. Over the years, candidates and PACs have needed to refund unwanted contributions from donors they do not want to accept funds from or if they had excess contributions at the end of a campaign. It is now clear that contributions can be returned and can be refunded so long as the refunds are itemized and reported.

- **Local Candidates Electronic Filing** – Local candidates (except for municipal candidates) who normally file with the Judge of Probate will now have the option of filing electronically with the Secretary of State. If the local candidate wants to do this, they must also file notice with the Judge of Probate that they will be filing with the Secretary of State and file reports in that manner throughout the election.

- **Eliminating Filings in Multiple Courthouses** – Local candidates will no longer be required to make duplicative filings if they are running for office in a municipality that is located in more than one county. Previously, those municipal candidates had to file with the Judge of Probate for each county that the municipality is located in. The FCPA now provides that the candidates are required to file only with the Judge of Probate in the county in which the city hall is located.

Secretary of State
2014 Official Filing Calendar

FCPA Filing Calendar - 2014 Election Cycle

Statewide Primary Election	Tuesday, June 3, 2014
Primary Runoff Election	Tuesday, July 15, 2014
General Election	Tuesday, November 4, 2014

This calendar is effective August 1, 2013.

Purple lines indicate deadlines involving monthly reports. Monthly reports are due on the second business day of the subsequent month beginning 12 months before the election date after crossing the threshold amount. [17-5-8(a)(1)] Monthly reports are not due if filing weekly reports. [17-5-8-(k)]

Blue lines indicate deadlines involving weekly reports. Weekly reports covering the period Saturday through Friday are due on the Monday of the subsequent week beginning four weeks before the election date. [17-5-8(a)(2)] Weekly reports are not due if filing daily reports. [17-5-8(k)]

Red lines indicate deadlines involving daily reports. Beginning on the 8th day prior to the election, daily reports are due for principal campaign committees and PACs that receive or spend $5,000 or more on any day with a view toward influencing the election. Once a principal campaign committee or PAC meets this daily amount, it must continue to file daily reports until the election date. Daily reports apply only to legislative, state school board, and statewide candidates, not circuit, district, county, or city offices. [17-5-8(a)(3)(a)]

Principal campaign committees and PACs must file a report disclosing the receipt of any single contribution of $20,000 or more within two (2) business days of receiving the contribution if the contribution has not already been reported in a finance disclosure report. [17-5-8.1(c)]

Date	Activity
June 3, 2013	Party candidates intending to participate in the 2014 primary election may begin soliciting and accepting contributions
June 30, 2013	Deadline to close books for the monthly report
June 30, 2013	Certified mail deadline for the monthly report
July 2, 2013	*Deadline to file the June monthly report*
July 31, 2013	Deadline to close books for the monthly report
July 31, 2013	Certified mail deadline for the monthly report
August 2, 2013	*Deadline to file the July monthly report*
August 31, 2013	Deadline to close books for the monthly report
September 2, 2013	Certified mail deadline for the monthly report
September 2, 2013	State Holiday
September 4, 2013	*Deadline to file the August monthly report*
September 30, 2013	Deadline to close books for the monthly report
September 30, 2013	Certified mail deadline for the monthly report
October 2, 2013	*Deadline to file the September monthly report*
October 14, 2013	State Holiday
October 31, 2013	Deadline to close books for the monthly report
November 2, 2013	Certified mail deadline for the monthly report
November 4, 2013	*Deadline to file the October monthly report*
November 4, 2013	Independent and third party candidates intending to participate in the 2014 general election, but not in the primary election, may begin soliciting and accepting contributions
November 11, 2013	State Holiday

FCPA Filing Calendar - 2014 Election Cycle

November 28, 2013	State Holiday
November 30, 2013	Deadline to close books for the monthly report
December 1, 2013	Certified mail deadline for the monthly report
December 3, 2013	*Deadline to file the November monthly report*
December 25, 2013	State Holiday
December 31, 2013	Deadline to close books for the monthly report
December 31, 2013	Certified mail deadline for the monthly report
January 1, 2014	State Holiday
January 3, 2014	*Deadline to file the December monthly report*
January 14, 2014	Regular legislative session begins; campaign fundraising ceases.
January 20, 2014	State Holiday
January 31, 2014	Deadline to close books for the monthly report
January 31, 2014	*Annual Report Due. [17-5-8(b)] Only for PACs and elected officials not already filing monthly reports in the 2014 election cycle.*
February 2, 2014	Certified mail deadline for the monthly report
February 4, 2014	*Deadline to file the January monthly report*
February 4, 2014	Electioneering communication for the primary election is defined as any communication disseminated through any federally regulated broadcast media, any mailing, or the distribution, electronic communication, phone bank, or publication containing (1) the name or image of a candidate; (2) is made within 120 days of an election in which the candidate will appear on the ballot; (3) the only reasonable conclusion to be drawn from the presentation and content of the communication is that it is intended to influence the outcome of an election; and (4) entails an expenditure in excess of one thousand dollars ($1,000). [17-5-2(a)(4)]
February 4, 2014	Candidates may begin fundraising during legislative session; within 120 days of primary election date. [17-5-7(b)(2)]
February 17, 2014	State Holiday
February 28, 2014	Deadline to close books for the monthly report
March 2, 2014	Certified mail deadline for the monthly report
March 4, 2014	*Deadline to file the February monthly report*
March 4, 2014	Mardi Gras - Observed in Baldwin and Mobile County
March 31, 2014	Deadline to close books for the monthly report
March 31, 2014	Certified mail deadline for the monthly report
April 2, 2014	*Deadline to file the March monthly report*
April 4, 2014	Last day candidates may qualify with political parties to participate in primary election. [17-13-5(a)]
April 28, 2014	State Holiday
April 30, 2014	Deadline to close books for the monthly report
April 30, 2014	Certified mail deadline for the monthly report
May 2, 2014	*Deadline to file the April monthly report*

FCPA Filing Calendar - 2014 Election Cycle

May 9, 2014	Deadline to close books for the weekly report for the primary election; includes all reportable activity since last report
May 10, 2014	Certified mail deadline for the weekly report for the primary election
May 12, 2014	*Deadline to file the weekly report for the primary election*
May 16, 2014	Deadline to close books for the weekly report for the primary election
May 17, 2014	Certified mail deadline for the weekly report for the primary election
May 19, 2014	*Deadline to file the weekly report for the primary election*
May 23, 2014	Deadline to close books for the weekly report for the primary election
May 24, 2014	Certified mail deadline for the weekly report for the primary election
May 26, 2014	State Holiday
May 26, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*
May 27, 2014	*Deadline to file the weekly report for the primary election*
May 27, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*
May 28, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*
May 29, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*
May 30, 2014	Deadline to close books for the monthly report
May 30, 2014	Certified mail deadline for the monthly report
May 30, 2014	Deadline to close books for the weekly report for the primary election
May 30, 2014	Certified mail deadline for the weekly report for the primary election
May 30, 2014	*Deadline to file the weekly report for the primary election*
May 30, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*
May 31, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*
June 1, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*
June 2, 2014	*Daily report due by 12:01 p.m. Please refer to the instructions on the top of the calendar page.*
June 2, 2014	State Holiday
June 3, 2014	PRIMARY ELECTION
June 3, 2014	*Deadline to file the May monthly report; <u>only</u> for candidates <u>not</u> participating in the primary election.*
June 20, 2014	Deadline to close books for the weekly report for the primary runoff election; includes all reportable activity since last report

FCPA Filing Calendar - 2014 Election Cycle

June 21, 2014	Certified mail deadline for the weekly report for the primary runoff election
June 23, 2014	*Deadline to file the weekly report for the primary runoff election*
June 27, 2014	Deadline to close books for the weekly report for the primary runoff election
June 28, 2014	Certified mail deadline for the weekly report for the primary runoff election
June 30, 2014	*Deadline to file the weekly report for the primary runoff election*
June 30, 2014	Deadline to close books for the monthly report
June 30, 2014	Certified mail deadline for the monthly report
July 2, 2014	*Deadline to file the June monthly report; only for candidates not participating in primary runoff election*
July 4, 2014	Electioneering communication for the general election is defined as any communication disseminated through any federally regulated broadcast media, any mailing, or the distribution, electronic communication, phone bank, or publication containing (1) the name or image of a candidate; (2) is made within 120 days of an election in which the candidate will appear on the ballot; (3) the only reasonable conclusion to be drawn from the presentation and content of the communication is that it is intended to influence the outcome of an election; and (4) entails an expenditure in excess of one thousand dollars ($1,000). [17-5-2(a)(4)]
July 4, 2014	State Holiday
July 4, 2014	Deadline to close books for the weekly report for the primary runoff election
July 5, 2014	Certified mail deadline for the weekly report for the primary runoff election
July 7, 2014	*Deadline to file the weekly report for the primary runoff election*
July 7, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*
July 8, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*
July 9, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*
July 10, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*
July 11, 2014	Deadline to close books for the weekly report for the primary runoff election
July 11, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*
July 12, 2014	Certified mail deadline for the weekly report for the primary runoff election
July 12, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*
July 13, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*

FCPA Filing Calendar - 2014 Election Cycle

July 14, 2014	*Deadline to file the weekly report for the primary runoff election*
July 14, 2014	*Daily report due by 12:01 p.m. Please refer to the instructions on the top of the calendar page.*
July 15, 2014	PRIMARY RUNOFF ELECTION
July 31, 2014	Deadline to close books for the monthly report for the general election
August 2, 2014	Certified mail deadline for the monthly report for the general election
August 4, 2014	*Deadline to file the July monthly report for the general election*
August 31, 2014	Deadline to close books for the monthly report for the general election
September 1, 2014	Certified mail deadline for the monthly report for the general election
September 3, 2014	*Deadline to file the August monthly report for the general election*
September 30, 2014	Deadline to close books for the monthly report for the general election
September 30, 2014	Certified mail deadline for the monthly report for the general election
October 1, 2014	*Last day to retire campaign debt for primary election (120 days after the election). [17-5-7(b)(3)]*
October 2, 2014	*Deadline to file the September monthly report for the general election*
October 10, 2014	Deadline to close books for the weekly report for the general election
October 12, 2014	Certified mail deadline for the weekly report for the general election
October 13, 2014	State Holiday
October 14, 2012	*Deadline to file the weekly report for the general election*
October 17, 2014	Deadline to close books for the weekly report for the general election
October 18, 2014	Certified mail deadline for the weekly report for the general election
October 20, 2014	*Deadline to file the weekly report for the general election*
October 24, 2014	Deadline to close books for the weekly report for the general election
October 25, 2014	Certified mail deadline for the weekly report for the general election
October 27, 2014	*Deadline to file the weekly report for the general election*
October 27, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*
October 28, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*
October 29, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*
October 30, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*

FCPA Filing Calendar - 2014 Election Cycle

October 31, 2014	Deadline to close books for the weekly report for the general election
October 31, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*
November 1, 2014	Certified mail deadline for the weekly report for the general election
November 1, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*
November 2, 2014	*Daily report due . Please refer to the instructions on the top of the calendar page.*
November 3, 2014	*Deadline to file the weekly report for the general election*
November 3, 2014	*Daily report due by 12:01 p.m. Please refer to the instructions on the top of the calendar page.*
November 4, 2014	General Election
November 12, 2014	*Last day to retire campaign debt for primary runoff election (120 days after the election). [17-5-7(b)(3)]*
January 31, 2015	*2014 annual report due (on or before January 31 of the succeeding year) next report after general election. [17-5-8(b)]*
March 4, 2015	*Last day to retire campaign debt for general election (120 days after the election). [17-5-7(b)(3)]*

Secretary of State
Reporting Regulations

Alabama Secretary of State
Fair Campaign Practices Act

Reporting Regulations Overview

On June 21, 2013, the Secretary of State issued four emergency regulations to implement the **general FCPA filing schedule** for candidates and political action committees to use in both paper and electronic formats. ***Those emergency regulations are in effect as of that day***. In addition, on June 28, 2013, four identical proposed regulations were published for comment by the Legislative Reference Service. Copies of those proposed regulations, 820-2-8-.01 through 820-2-8-.04 are included with this reference material. They are open for comment until August 2, 2013.

On July 1, 2013, the Secretary of State issued one additional emergency regulation, 820-2-8-.05, addressing **major contribution reports** under Section 17-5-8.1(c) of the FCPA. ***That emergency regulation is in effect as of that day***. In addition, that same regulation will be proposed by the Office and published by the Legislative Reference Service on July 31, 2013 for a comment period ending on September 4, 2013. A copy of the emergency regulation is included with this reference material.

APA-2
07/04

Office of the Secretary of State
Elections Division

NOTICE OF INTENDED ACTION

AGENCY NAME: Secretary of State

RULE NO. & TITLE:

820-2-8-.01	Fair Campaign Practices Act Reports
820-2-8-.02	Monthly Reports
820-2-8-.03	Weekly Reports
820-2-8-.04	Daily Reports

INTENDED ACTION: New rule.

SUBSTANCE OF PROPOSED ACTION:

Adopt Fair Campaign Practices Act filing rules to comply with the Code of Alabama, section 17-5-8 (2012).

TIME, PLACE, MANNER OF PRESENTING VIEWS:

Views may be presented orally or in writing and should be addressed to Jean Brown, Chief Legal Advisor, Office of the Secretary of State, P.O. Box 5616, Montgomery, Alabama 36103; 334-242-7202.

FINAL DATE FOR COMMENT AND COMPLETION OF THE NOTICE:

August 2, 2013

CONTACT PERSON AT AGENCY:
Jean Brown, Office of the Secretary of State, State Capitol, 600 Dexter Avenue, Suite S-205, Montgomery, Alabama 36104; 334-242-7202.

Beth Chapman

(Signature of officer authorized to promulgate and adopt rules or his or her deputy)

NEW

Fair Campaign Practices Act Filing Regulations

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820-2-8-.01 Fair Campaign Practices Act Reports.

Upon reaching the statutory threshold amount, each principal campaign committee or political action committee shall file with the Secretary of State or judge of probate as designated in Alabama Code, Section 17-5-9, periodic reports of contributions and expenditures as set forth below.

Authors: Julie Sinclair; Jean Brown.
Statutory Authority: Code of Alabama, section 17-5-8 (2012).
History: New Rule: Filed June 28, 2013; effective August 2, 2013.

820-2-8-.02 Monthly Reports.

Beginning after the 2012 election cycle, regardless of whether a candidate has opposition in any election, candidates must file monthly reports not later than the second business day of the subsequent month, beginning 12 months before the date of any primary, special, runoff, or general election for which a political action committee or principal campaign committee receives contributions or makes expenditures with a view toward influencing such election's result. A monthly report shall include all reportable transactions for the previous full month period.

Authors: Julie Sinclair; Jean Brown.
Statutory Authority: Code of Alabama, section 17-5-8 (2012).
History: New Rule: Filed June 28, 2013; effective August 2, 2013.

820-2-7-.03 Weekly Reports.

For purposes of filing weekly reports, a "week" is defined as running from a Saturday to a Friday. With regard to a primary, special, runoff, or general election, a report shall be required weekly for each of the four weeks before the election that includes all reportable transactions for the previous week, as "week" is defined in this rule. The first weekly report shall include all reportable transactions that occurred since the most recently filed prior report. Weekly reports shall be filed on the Monday of the succeeding week.

Authors: Julie Sinclair; Jean Brown.
Statutory Authority: Code of Alabama, section 17-5-8 (2012).
History: New Rule: Filed June 28, 2013; effective August 2, 2013.

820-2-7-.04 Daily Reports.

In addition to the reporting dates specified in Rule 820-2-7-.02 and 820-2-7-.03, reports shall be filed with the Secretary of State on the eighth, seventh, sixth, fifth, fourth, third, and second day before a legislative, state school board or other statewide primary, special, runoff, or general election, and by 12:01 p.m. on the day before a legislative, state school board or other statewide primary, special, runoff, or general election if any principal campaign committee or political action committee receives or spends in the aggregate five thousand dollars ($5,000) or more on any day with a view toward influencing an election's results. If a daily report is required, the report shall include all reportable transactions occurring on the day of the report as well as all reportable transactions that occurred on each day since the most recently filed prior report. Once a daily report is filed, daily reports are required to be filed for the rest of the reporting cycle before the election.

Authors: Julie Sinclair; Jean Brown.
Statutory Authority: Code of Alabama, section 17-5-8 (2012).
History: New Rule: Filed June 28, 2013; effective August 2, 2013.

Secretary of State Emergency Regulation on Major Contribution Reports

820-2-8-.05ER **Major Contribution Reports.**

Unless otherwise included in a report made pursuant to Rule 820-2-8-.02, 820-2-8-.03 or 820-2-8-.04, a principal campaign committee or a political action committee shall file a report disclosing the receipt of any single contribution of twenty thousand dollars ($20,000) or more.

(a) For purposes of filing major contribution reports, any of the following shall be considered a "contribution":

1. A gift, subscription, loan, advance, deposit of money or anything of value, a payment, a forgiveness of a loan, or payment of a third party, made for the purpose of influencing the result of an election.

2. A contract or agreement to make a gift, subscription, loan, advance, or deposit of money or anything of value for the purpose of influencing the result of an election.

3. Any transfer of anything of value received by a political committee from another political committee, political party, or other source.

4. The payment of compensation by any person for the personal services or expenses of any other person if the services are rendered or expenses incurred on behalf of a candidate, political committee, or political party without payment of full and adequate compensation by the candidate, political committee, or political party. Provided, however, that the payment of compensation by a corporation for

the purpose of establishing, administering, or soliciting voluntary contributions to a separate, segregated fund as permitted by Section 10-1-2, *Code of Alabama, 1975* shall not constitute a contribution.

(b) The term "contribution" does not include:

1. The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee.

2. The use of real or personal property and the cost of invitations, food, or beverages, voluntarily provided by an individual to a candidate or political committee in rendering voluntary personal services on the individual's residential or business premises for election-related activities.

3. The sale of any food or beverage by a vendor for use in an election campaign at a charge to a candidate or political committee less than the normal comparable charge, if the charge to the political committee for use in an election campaign is at least equal to the cost of the food or beverage to the vendor.

4. Any unreimbursed payment for travel expenses made by an individual who, on his or her own behalf, volunteers personal services to a candidate or political committee.

5. The payment by a state or local committee of a political party of the cost of preparation,

display, or mailing or other distribution incurred by the committee with respect to a printed slate card or sample ballot, or other printed listing of two or more candidates for any public office for which an election is held in the state, except that this subparagraph shall not apply in the case of costs incurred by the committee with respect to a display of the listing made on broadcasting stations, or in newspapers, magazines, or other similar types of general public political advertising.

6. The value or cost of polling data and voter preference data and information if provided to a candidate or political committee, unless the information was compiled with the advance knowledge of and approval of the candidate or the political committee.

(c) The effective date of this rule shall be July 1, 2013.

Authors: Adam Thompson; Jean Brown; Julie Sinclair.
Statutory Authority: Code of Alabama, section 17-5-8.1(c)(2011).
History: New Rule: Filed July 1, 2013; effective July 1, 2013.

Secretary of State
Electronic Filing Regulations

Fair Campaign Practices Act Filing Regulations

Table of Contents

820-2-8-.10 Electronic Registration Required.

(a) Principal Campaign Committees and Political Action Committees Formed Prior to June 1, 2013. All Principal Campaign Committees and Political Action Committees formed prior to June 1, 2013 that were registered with the Secretary of State prior to that date must re-register electronically in order to access the internet Fair Campaign Practices Act ("FCPA") reporting website.

(b) Principal Campaign Committees and Political Action Committees Formed on or After June 1, 2013. All Principal Campaign Committees and Political Action Committees formed on or after June 1, 2013 that are required to register with the Secretary of State shall register electronically in order to access the internet FCPA reporting website.

820-2-8-.11 Form and Method of Electronic Registration. Electronic registration shall be implemented by logging onto the electronic FCPA website provided by the Secretary of State's office and completing the registration form. Registration is complete when a printed copy of the form is signed and delivered to the Elections Division of the Secretary of State's office. The Secretary of

State shall review each registration and activate a Principal Campaign Committee's or a Political Action Committee's electronic account after a printed copy of the electronic registration form has been received.

820-2-8-.12 Expedited Method of Registration. Upon completion of the online registration process, to receive expedited activation, a Principal Campaign Committee or Political Action Committee may

(a) deliver the signed form to the Elections Division of the Secretary of State's office in person, or

(b) if activation is needed within 5 days of a reporting deadline, transmit the form by facsimile and/or call the Elections Division for immediate activation during normal business hours.

Nothing in this expedited registration process supersedes the requirement of sending a signed original form to the Secretary of State as provided in 820-2-8-.02.

820-2-8-.13 Fair Campaign Practices Act Reports. After electronic registration is activated, all FCPA reports required to be filed under Code of Alabama, section 17-5-8, shall be filed electronically.

820-2-8-.14 Emergency Alternative FCPA Reporting Methods. If the electronic FCPA reporting system is not functioning at either the local or state level due to system failure, power outages, or other emergency conditions, the report may be faxed to the Secretary of State's Elections Division for receipt by no later than midnight (12:00 a.m.) on the due date. If emergency conditions permit, an entity may also hand deliver or place the report in certified mail or with a commercial carrier so that it is received by the Elections Division by the close of business on the day it is due. As soon as possible after the emergency conditions have subsided, an electronic FCPA report must be

filed in order for the entity to remain current within the electronic filing system.

820-2-8-.15 Public Access To Computer Terminal. The Elections Division of the Secretary of State's office will provide at least one computer terminal accessible to the general public for retrieving electronic FCPA reports and filings. The computer terminal will be available to the general public during regular business hours of the Secretary of State's office. Persons wishing to use the computer terminal will provide the following information on a "Sign In" sheet placed on the desk where the computer terminal is located: name, physical address, the date and time of use of the computer terminal, and the purpose for use of the computer terminal.

Secretary of State
Electronic Filing FAQs

Alabama Electronic Fair Campaign Practices Act (FCPA) Reporting System

Frequently Asked Questions (FAQs)

I am a citizen/member of the press, do I have to register?
No. You will be able to search, view and download reports without registering.

I am a citizen/member of the press, can I download contributions/expenditures in bulk?
Yes. You will be able to download contributions/expenditures in a variety of formats.

I am a candidate/PAC, do I have to register even if I have run for office before or have an existing PAC?
Yes. **Everyone** who will use the new Electronic FCPA Reporting System will have to register themselves on the new system, no matter if they have run for office before or are an existing PAC.

What is the web address for the new system?
The website is https://fcpa.alabamavotes.gov.

Do I have to have an email address to use the new system?
Yes. You must have a valid email address to use the new system.

I don't have a computer, how can I register and file reports?
The Secretary of State's Office will maintain a publicly accessible computer during normal business hours for candidates/PACs to use. We also suggest using your local library if you need computer access.

I use a third-party software program to manage my contributions/expenditures. Will my software work with this new system?
Most likely, yes. The new system allows for bulk uploading your contributions/expenditures in .XML or .XLS (MS Excel) formats. If your software can export your data into one of these formats you should be able to upload to the new system. However, you must still login and use the new system to actually "file" the report.

The technical specifications for .XML or .XLS (MS Excel) uploading/formatting can be found at www.AlabamaVotes.gov.

I need technical help with the new system, is there a Help Desk available?
Yes. Our vendor (Quest Information Systems, Inc.) has a Help Desk available 7:00 AM to 6:00 PM, Monday – Friday to assist candidates/PACs with technical questions about the new system. You can contact the Quest Help Desk toll free at 1-888-864-8910 or email campaignfinancesupport@questis.com.

If you have general elections related questions, please continue to contact the Elections Division at 1-800-274-8683

Unofficial Restated Redlined Fair Campaign Practices Act

Unofficial Restated Fair Campaign Practices Act
Based on Statutory Revisions in 2010 Special and 2011, 2012, and 2013 Regular Sessions**
(Revised Sections Highlighted in Yellow Below) – WORKING DRAFT 7-8-2013

** The FCPA was amended by six different Acts from 2010 through 2013. Those were Act Nos. 2010-765, 2011-687, 2011-697, 2012-477, 2012-461, and 2013-311.

In this document, the provisions revised in 2010, 2011, and 2012 are highlighted in gray. The revisions from 2013 are shown in ~~redline~~ and blueline format. **The 2013 revisions go into effect on August 1, 2013.**

§ 17-5-1. Title

This chapter shall be known and may be cited as the "Fair Campaign Practices Act."

§ 17-5-2. Definitions[1]

(**a)** For purposes of this chapter, the following terms shall have the following meanings:

(1) Candidate. An individual who has done any of the following:

a. Taken the action necessary under the laws of the state to qualify himself or herself for nomination or for election to any state office or local office or in the case of an independent seeking ballot access, on the date when he or she files a petition with the judge of probate in the case of county offices, with the appropriate qualifying municipal official in the case of municipal offices, or the Secretary of State in all other cases.

b. Received contributions or made expenditures in excess of one thousand dollars ($1,000), or given his or her consent for any other person or persons to receive contributions or make expenditures in excess of one thousand dollars ($1,000), with a view to bringing about his or her nomination or election to any state office or local office. ~~Notwithstanding the foregoing, no person shall be considered a candidate within the meaning of this subdivision until the time that he or she has either received contributions or made expenditures as provided herein in the following amounts:~~

~~**1.** Twenty-five thousand dollars ($25,000) or more, with a view toward bringing about nomination or election to any state office other than one filled by election of the registered voters of any circuit or district within the state.~~

~~**2.** Five thousand dollars ($5,000) or more, with a view toward bringing about nomination or election to any state office, excluding legislative office, filled by election of the registered voters of any circuit or district.~~

~~**3.** Ten thousand dollars ($10,000) or more, with a view toward bringing about nomination or election to the Alabama Senate and five thousand dollars ($5,000) or more, with a view toward bringing about nomination or election to the Alabama House of Representatives.~~

~~**4.** One thousand dollars ($1,000) or more, with a view toward bringing about nomination or election to any local office.~~

(2) Contribution.

[1] This section was modified by Act Nos. 2011-697 and 2013-311. The revisions from 2011 are highlighted in gray. The revisions from 2013 are shown in ~~redline~~ and blueline format.

a. Any of the following shall be considered a contribution:

1. A gift, subscription, loan, advance, deposit of money or anything of value, a payment, a forgiveness of a loan, or payment of a third party, made for the purpose of influencing the result of an election.

2. A contract or agreement to make a gift, subscription, loan, advance, or deposit of money or anything of value for the purpose of influencing the result of an election.

3. Any transfer of anything of value received by a political committee from another political committee, political party, or other source.

4. The payment of compensation by any person for the personal services or expenses of any other person if the services are rendered or expenses incurred on behalf of a candidate, political committee, or political party without payment of full and adequate compensation by the candidate, political committee, or political party. Provided, however, that the payment of compensation by a corporation for the purpose of establishing, administering, or soliciting voluntary contributions to a separate, segregated fund as permitted ~~by Section 10-1-2~~ in this chapter, shall not constitute a contribution.

b. The term "contribution" does not include:

1. The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee.

2. The use of real or personal property and the cost of invitations, food, or beverages, voluntarily provided by an individual to a candidate or political committee in rendering voluntary personal services on the individual's residential or business premises for election-related activities.

3. The sale of any food or beverage by a vendor for use in an election campaign at a charge to a candidate or political committee less than the normal comparable charge, if the charge to the political committee for use in an election campaign is at least equal to the cost of the food or beverage to the vendor.

4. Any unreimbursed payment for travel expenses made by an individual who on his or her own behalf volunteers personal services to a candidate or political committee.

5. The payment by a state or local committee of a political party of the cost of preparation, display, or mailing or other distribution incurred by the committee with respect to a printed slate card or sample ballot, or other

printed listing of two or more candidates for any public office for which an election is held in the state, except that this subparagraph shall not apply in the case of costs incurred by the committee with respect to a display of the listing made on broadcasting stations, or in newspapers, magazines, or other similar types of general public political advertising.

6. The value or cost of polling data and voter preference data and information if provided to a candidate or political committee, unless the information was compiled with the advance knowledge of and approval of the candidate or the political committee.

(3) Designated Filing Agent. An individual appointed and authorized as attorney in fact to electronically submit any report or other filing required by this chapter on behalf of a candidate, his or her principal campaign committee, or a political action committee.

(~~3~~4) Election. Unless otherwise specified, any general, special, primary, or runoff election, or any convention or caucus of a political party held to nominate a candidate, or any election at which a constitutional amendment or other proposition is submitted to the popular vote.

(~~4~~5) Electioneering Communication. Any communication disseminated through any federally regulated broadcast media, any mailing, or other distribution, electronic communication, phone bank, or publication which (i) contains the name or image of a candidate; (ii) is made within 120 days of an election in which the candidate will appear on the ballot; (iii) the only reasonable conclusion to be drawn from the presentation and content of the communication is that it is intended to influence the outcome of an election; and (iv) entails an expenditure in excess of one thousand dollars ($1,000).

(~~5~~6) Expenditure.

a. The following shall be considered expenditures:

1. A purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made for the purpose of influencing the result of an election.

2. A contract or agreement to make any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, for the purpose of influencing the result of an election.

3. The transfer, gift, or contribution of funds of a political committee to another political committee.

b. The term “expenditure” does not include:

1. Any news story, commentary, or editorial prepared by and distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless the facilities are owned or controlled by any political party or political committee.

2. Nonpartisan activity designed to encourage individuals to register to vote, or to vote.

3. Any communication by any membership organization to its members or by a corporation to its stockholders and employees if the membership organization or corporation is not organized primarily for the purpose of influencing the result of an election.

4. The use of real or personal property and the cost of invitations, food, or beverages, voluntarily provided by an individual in rendering voluntary personal services on the individual's residential or business premises for election-related activities.

5. Any unreimbursed payment for travel expenses made by an individual who, on his or her own behalf, volunteers personal services to a candidate or political committee.

6. Any communication by any person which is not made for the purposes of influencing the result of an election.

7. The payment by a state or local committee of a political party of the cost of preparation, display, or mailing or other distribution incurred by the committee with respect to a printed slate card or sample ballot, or other printed listing of two or more candidates for any public office for which an election is held in the state, except that this subparagraph shall not apply in the case of costs incurred by the committee with respect to a display of the listing made on broadcasting stations, or in newspapers, magazines, or other similar types of general public political advertising.

(~~6~~7) Identification. The full name and complete address.

(~~7~~8) Loan. A transfer of money, property, or anything of value in consideration of a promise or obligation, conditional or not, to repay in whole or part.

(~~8~~9) Local office. Any office under the constitution and laws of the state, except circuit, district, or legislative offices, filled by election of the registered voters of a single county or municipality, or by the voters of a division contained within a county or municipality.

(~~9~~10) Person. An individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

(~~10~~11) Personal and legislative living expenses. Household supplies, personal clothing, tuition payments, mortgage, rent, or utility payments for a personal residence; admission to an entertainment event or fees for a country club or social club, unless tied to a specific campaign event or functions involving constituents; and any other expense, excluding food and beverages, that would exist irrespective of the candidate's campaign or duties as a Legislator. Personal and legislative living expenses shall not include expenses for food,

beverages, travel, or communications incurred by the Legislator in the performance of the office held.

(~~11~~12) Political action committee. Any ~~political action~~ committee, club, association, political party, or other group of one or more persons, whether in-state or out-of-state, which receives or anticipates receiving contributions ~~or~~ and makes or anticipates making expenditures to or on behalf of any Alabama state or local elected official, proposition, candidate, principal campaign committee or other political action committee. For the purposes of this chapter, ~~an individual~~ a person who makes a ~~personal~~ political contribution shall not be considered a political action committee by virtue of making such contribution.

(13) Political Party. A political party as defined in Section 17-13-40.

(~~12~~14) Principal campaign committee. The principal campaign committee designated by a candidate under Section 17-5-4. A political action committee established primarily to benefit an individual candidate or an individual elected official shall be considered a principal campaign committee for purposes of this chapter.

(~~13~~15) **Proposition.** Any proposal for submission to the general public for its approval or rejection, including proposed as well as qualified ballot questions.

(~~14~~16) Public official. Any person elected to public office, whether or not that person has taken office, by the vote of the people at the state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-13-40.

(~~15~~17) State. The State of Alabama.

(~~16~~18) State office. All offices under the constitution and laws of the state filled by election of the registered voters of the state or of any circuit or district and shall include legislative offices.

(b) The words and terms used in this chapter shall have the same meanings respectively ascribed to them in Section 36-25-1.

§ 17-5-3. Political action committees; officers; segregation of funds; accounting and reporting; duties

(a) Every political action committee shall have a chair and a treasurer.

(b) All funds of a political action committee shall be segregated from, and shall not be commingled with, any personal funds of officers, members, or associates of such committee.

(c) It shall be the duty of the treasurer of a political action committee to keep a detailed, exact account of:

(1) All contributions made to or for such committee.

(2) All expenditures made by or on behalf of such committee.

(3) The identification of every person to whom an expenditure is made, the date and amount thereof, and the name of each candidate on whose behalf such expenditure was made or a designation of the election proposition the result of which the political action committee will attempt to influence by making expenditures or receiving contributions.

(d) It shall be the duty of the treasurer to obtain and keep a receipted bill or cancelled check, stating the particulars for every expenditure made by or on behalf of a political action committee greater than $100, and for any such expenditure in a lesser amount, if the aggregate amount of such expenditures to the same person during a calendar year is greater than $100. Provided, however, the treasurer of a political action committee shall not be required under this chapter to report any expenditure not related to political contributions or expenditures or made as an administrative expense. The treasurer shall preserve all receipted bills and accounts required to be kept by this section for a period of two years from the date of any such expenditure.

§ 17-5-4. Principal campaign committee; Candidate to file statement showing principal campaign committee; candidate acting as own committee; duties and procedures; expenditures by candidate

Within five days after any person becomes a candidate for office, such person shall file with the Secretary of State or judge of probate, as provided in Section 17-5-9, a statement showing the name of not less than two nor more than five persons elected to serve as the principal campaign committee for such candidate, together with a written acceptance or consent by such committee, but any candidate may declare himself or herself as the person chosen to serve as the principal campaign committee, in which case such candidate shall perform the duties of chair and treasurer of such committee prescribed by this chapter. If any vacancies be created by death or resignation or any other cause, such candidate may fill such vacancy, or the remaining members shall discharge and complete the duties required of such committee as if such vacancy had not been created. The principal campaign committee, or its treasurer, shall have exclusive custody of all moneys contributed, donated, subscribed or in any manner furnished to or for the candidate represented by such committee, and shall account for and disburse the same. No candidate shall expend any money in aid of his or her nomination or election except by contributing to the principal campaign committee designated by the candidate.

§ 17-5-5. Statement of organization by political action committee; report of material changes; notice of termination or dissolution of committee[2]

(a) ~~Each~~ The treasurer or designated filing agent of each political action committee which anticipates either receiving contributions or making expenditures during the calendar year in an aggregate amount exceeding $1,000 shall file with the Secretary of State or the judge of probate as herein provided in Section 17-5-9, a statement of organization, within 10 days after its organization or, if later within 10 days after the date on which it has information which causes the committee to anticipate it will receive contributions or make expenditures in an aggregate amount in excess of $1,000.

(b) The statement of organization shall include:

(1) The name and complete address of the committee.

(2) The identification of affiliated or connected organizations, if any.

(3) The purposes of the committee.

(4) The identification of the chair and treasurer.

(5) The identification of principal officers, including members of any finance committee.

(6) A description of the constitutional amendments or other propositions, if any, that the committee is supporting or opposing, and the identity, if known, of any candidate or elected official that the committee is supporting or opposing.

(7) A statement whether the committee is a continuing one, and if not, the expected termination or dissolution date.

(8) The disposition of residual funds which will be made in the event of dissolution.

(c) ~~Any~~ Whenever there is any material change in information previously submitted in a statement of organization, except for the information described in subdivision (6) above, ~~shall be reported~~ the treasurer or designated filing agent of the political action committee shall report the change to the Secretary of State or judge of probate as provided in Section 17-5-9, within 10 days following the change.

(d) Any political action committee or any principal campaign committee after having filed its initial statement of organization shall continue in existence until terminated or dissolved as provided herein. When any political action committee determines it will no longer receive contributions or make expenditures during any calendar year in an aggregate amount exceeding $1,000, or when any candidate through his or her principal campaign committee determines that he or she will not receive contributions or make expenditures in the amounts specified in Section 17-5-2, the ~~chair or~~ treasurer, designated filing agent, or candidate of such political committee ~~may~~ shall so notify the Secretary of State or judge of probate, as designated in Section 17-5-9, of the termination or dissolution of such political committee. Such notice shall contain a statement by the treasurer, designated filing agent, or candidate of such committee of the intended disposition of any residual funds then held by the committee ~~on behalf of a candidate~~.

[2] This section was modified by Act No. 2013-311.

§ 17-5-5.1. *[Legislative caucuses]* [3]

(a) Except as provided in subsection (d), each legislative caucus organization that raises funds for its administration and operation shall register with the Secretary of the Senate, for a Senate caucus, or the Clerk of the House of Representatives, for a House caucus, or both for a bicameral legislative caucus. Such registration shall be on a form jointly created by the Secretary of the Senate and the Clerk of the House of Representatives and shall include the name and complete address of the organization, the identification of and contact information for the organization's designated representative, and a general description of the organization.

(b) A legislative caucus organization duly registered pursuant to subsection (a) shall not contribute to or expend funds in support of candidates, principal campaign committees, propositions, or political action committees for the purpose of influencing the result of an election. Notwithstanding any other provision of law, the donation of funds or other resources to a duly registered legislative caucus organization in support of the administration or operations of the caucus is permissible, provided that the donation is not made for the purpose of influencing the result of an election.

(c) Nothing in this section shall be construed to exempt a legislative caucus organization or its officers, directors, or members from the Ethics Law.

(d) A legislative caucus organization that receives contributions or makes expenditures for the purpose of influencing the outcome of an election and is not registered as provided in subsection (a) shall be regulated as a political action committee under this chapter and shall comply with all the requirements of this chapter pertaining to political action committees.

§ 17-5-6. Checking account; expenditures

A political action committee and a principal campaign committee shall maintain a checking account and shall deposit any contributions received by such committee into such account. No expenditure of funds may be made by any such committee except by check drawn on such account, or out of a petty cash fund from which it may make expenditures not in excess of $100 to any person in connection with a single purchase or transaction.

[3] This section was added by Act No. 2013-311.

§ 17-5-7. Use of excess moneys received; solicitation, etc., of contributions[4]

(a) ~~A~~ Except as provided in subsection (d) and in Section 17-5-7.1, a candidate, public official, or treasurer of a principal campaign committee as defined in this chapter, may only use campaign contributions, and any proceeds from investing the contributions that are in excess of any amount necessary to defray expenditures of the candidate, public official, or principal campaign committee, for the following purposes:

(1) Necessary and ordinary expenditures of the campaign.

(2) Expenditures that are reasonably related to performing the duties of the office held. For purposes of this section, expenditures that are reasonably related to performing the duties of the office held do not include personal and legislative living expenses, as defined in this chapter.

(3) Donations to the State General Fund, the Education Trust Fund, or equivalent county or municipal funds.

(4) Donations to an organization to which a federal income tax deduction is permitted under subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended, or any other charitable, educational, or eleemosynary cause of Section 501 of Title 26 of the U. S. Code.

(45) Inaugural or transitional expenses.

(6) Donations to a legislative caucus organization registered under this chapter which does not operate as a political action committee.

(b) Notwithstanding any other provision of law, including, but not limited to, Section 13A-10-61, a candidate, public official, or principal campaign committee may only accept, solicit, or receive contributions:

(1) To influence the outcome of an election.

(2) For a period of 12 months before an election in which the person intends to be a candidate. Provided, however, candidates for ~~state~~ legislative and statewide office and their principal campaign committees may not accept, solicit, or receive contributions during the period when the Legislature is convened in session. For purposes of this section, the Legislature is convened in session at any time from the opening day of the special or regular session and continued through the day of adjournment sine die for that session. However, this subdivision shall not apply within 120 days of any primary, runoff, or general election, and shall not apply to the candidates or their principal campaign committees participating in any special election as called by the Governor. This subdivision shall not apply to a loan from a candidate to his or her own principal campaign committee.

[4] This section was modified by Act Nos. 2010-765 and 2013-311. The revisions from 2010 are highlighted in gray. The revisions from 2013 are shown in ~~redline~~ and blueline format.

(3) For a period of 120 days after the election in which the person was a candidate, but only to the extent of any campaign debt of the candidate or principal campaign committee of the candidate as indicated on the campaign financial disclosure form or to the extent of reaching the threshold that is required for qualification as a candidate for the office which he or she currently holds, or both.

(4) For the purpose of paying all expenses associated with an election challenge including, but not limited to, quo warranto challenges.

(c) Notwithstanding any other provision of law, including, but not limited to, Section 13A-10-61, a candidate, public official, or principal campaign committee shall not accept, solicit, or receive contributions for any of the following reasons:

(1) As a bribe, as defined by Sections 13A-10-60 to 13A-10-63, inclusive.

(2) For the intention of corruptly influencing the official actions of the public official or candidate for public office.

(d) Notwithstanding any other provision of law, a principal campaign committee, during a ~~term of office~~ two-year period commencing on the day after ~~the~~ each regularly scheduled general election ~~for the seat or office the candidate seeks and ending on the day of the next general election for that seat or office~~ and ending on the day of the next regularly scheduled general election, may pay qualifying fees to a political party and in addition thereto, during that period, may expend up to a cumulative total of five thousand dollars ($5,000) of campaign contributions, and any proceeds from investing the contributions, for the following purposes:

(1) Tickets for political party dinners or functions.

(2) State or local political party dues or similar expenses incurred by independent or write-in candidates.

§ 17-5-7.1. *[Return or refund of contributions]* [5]

(a) Notwithstanding any other provision of law, a principal campaign committee or political action committee may return or refund, in full or in part, any lawful contribution it receives to the donor, provided that such return or refund may not exceed the amount received. Any lawful contribution refunded to the donor must have been reported in an itemized manner and the refund shall be itemized in the report for the period in which the refund is made. In the case of a political action committee, the refund shall occur within 18 months of the date of the contribution; provided, however, that if the refund of the contribution is required by law or regulation, then the 18-month time limitation shall not apply.

(b) Notwithstanding any other provision of law, a principal campaign committee or political action committee shall promptly return or refund, in full, any unlawful contribution. It shall be unlawful for any person acting on behalf of a principal campaign committee or political action committee to retain or cause to be retained a contribution that the person knows or reasonably should know was made in violation of this chapter. It is a defense to prosecution that the unlawful contribution was returned or refunded in full within 10 days of the date the contribution was made.

[5] This section was added by Act No. 2013-311.

§ 17-5-8. Reports of contributions and expenditures by candidates, committees, and officials; filing; procedure[6]

(a) ~~Each~~ The treasurer, designated filing agent, or candidate, ~~principal campaign committee or political action committee~~ shall file with the Secretary of State or judge of probate, as designated in Section 17-5-9, reports of contributions and expenditures at the following times once a principal campaign committee files its statement under Section 17-5-4 or a political action committee files its statement of organization under Section 17-5-5:

(1) Beginning after the 2012 election cycle, regardless of whether a candidate has opposition in any election, monthly reports not later than the second business day of the subsequent month, beginning 12 months before the date of any primary, special, runoff, or general election for which a political action committee or principal campaign committee receives contributions or makes expenditures with a view toward influencing such election's result. A monthly report shall include all reportable transactions for the previous full month period. Reports shall be required as provided in subdivisions (2) and (3).

(2) With regard to a primary, special, runoff, or general election, a report shall be required weekly on the Monday of the succeeding week for each of the four weeks before the election that includes all reportable activities for the previous week.

(3) a. In addition to the reporting dates specified in subdivisions (1) and (2), reports required to be filed with the Secretary of State shall be filed with the Secretary of State on the eighth, seventh, sixth, fifth, fourth, third, and second day preceding a legislative, state school board or other statewide primary, special, runoff, or general election, and by 12:01 ~~a.m.~~ p.m. on the day preceding a legislative, state school board, or statewide, primary, special, runoff, or general election if any principal campaign committee or political action committee receives or spends in the aggregate five thousand dollars ($5,000) or more on any day with a view toward influencing an election's results. If a daily report is required pursuant to this subdivision, the report shall include all reportable activity occurring on the day of the report as well as all reportable activity that has occurred on each day since the most recent prior report. Principal campaign committees and political action committees that are exempt from electronic filing and principal campaign committees and political action committees required to make daily reports pursuant to this subdivision for the 2012 election cycle may file reports by facsimile (FAX) transmission provided they keep proper documentation in their office.

b. Electronic filing on the Secretary of State's website may be implemented sooner than the 2014 election cycle as an alternative method of reporting; however, electronic filing shall be required beginning with the 2014 election cycle. Electronic filings shall be available to the public on a searchable database maintained on the Secretary of State's website.

(b) Except as provided in subsection (1), each principal campaign committee, political action committee, and elected state and local official covered under the provisions of this chapter, shall annually file with the Secretary of State or judge of probate, as designated in Section 17-5-9, reports

[6] This section was modified by Act Nos. 2011-687, 2011-697, 2012-477, and 2013-311. The revisions from 2011 and 2012 are highlighted in gray. The revisions from 2013 are shown in ~~redline~~ and blueline format.

of contributions and expenditures made during that year. The annual reports required under this subsection shall be made on or before January 31 of the succeeding year.

(c) Each report under this section shall disclose:

(1) The amount of cash or other assets on hand at the beginning of the reporting period and forward until the end of that reporting period and disbursements made from same.

(2) The identification of each person who has made contributions to such committee or candidate within the calendar year in an aggregate amount greater than one hundred dollars ($100), together with the amount and date of all such contributions; provided, however, in the case of a political action committee identification shall mean the name and city of residence of each person who has made contributions within the calendar year in an aggregate amount greater than one hundred dollars ($100).

(3) The total amount of other contributions received during the calendar year but not reported under subdivision (c)(2) of this section.

(4) Each loan to or from any person within the calendar year in an aggregate amount greater than one hundred dollars ($100), together with the identification of the lender, the identification of the endorsers, or guarantors, if any, and the date and amount of such loans.

(5) The total amount of receipts from any other source during such calendar year.

(6) The grand total of all receipts by or for such committee during the calendar year.

(7) The identification of each person to whom expenditures have been made by or on behalf of such committee or elected official within the calendar year in an aggregate amount greater than one hundred dollars ($100), the amount, date, and purpose of each such expenditure, and, if applicable, the designation of each constitutional amendment or other proposition with respect to which an expenditure was made.

(8) The identification of each person to whom an expenditure for personal services, salaries, and reimbursed expenses greater than one hundred dollars ($100) has been made, and which is not otherwise reported or exempted from the provisions of this chapter, including the amount, date, and purpose of such expenditure.

(9) The grand total of all expenditures made by such committee or elected official during the calendar year.

(10) The amount and nature of debts and obligations owed by or to the committee or elected official, together with a statement as to the circumstances and conditions under which any such debt or obligation was extinguished and the consideration therefor.

(d) Each report required by this section shall be signed and filed by the elected official or on behalf of the political action committee by its chair or treasurer and, if filed on behalf of a principal campaign committee, by the candidate represented by such committee. There shall be attached to each such report an affidavit subscribed and sworn to by the official or chair or treasurer and, if filed by a principal campaign committee, the candidate represented by such committee, setting forth in substance that such report is to the best of his or her knowledge and belief in all respects true and complete, and, if made by a candidate, that he or she has not received any contributions or made any expenditures which are not set forth and covered by such report.

(e) Commencing with the 2014 election cycle, electronic filing of contributions and expenditures for any legislative, state school board, and statewide primary, special, runoff, or general election shall be mandatory, except as provided in subsection (g). The Secretary of State may provide electronic reporting sooner than the 2014 election cycle. Electronic filing shall satisfy any filing requirements of this chapter and no paper filing is required for any report filed electronically.

(f) In the 2012 election cycle the provisions for the time of filing contained in subsection (a) shall apply to the paper or facsimile (FAX) filings for any legislative, state school board, or statewide primary, special, runoff, or general election.

(g) Electronic filing of reports shall not apply to any campaign, principal campaign committee, or political action committee receiving ten thousand dollars ($10,000) or less per election cycle.

(h) In connection with any electioneering communication paid for by a person, nonprofit corporation, entity, principal campaign committee, or other political committee or entity, the payor shall disclose its contributions and expenditures in accordance with this section. The disclosure shall be made in the same form and at the same time as is required of political action committees in this section; provided, however, no duplicate reporting shall be required by a political committee.

(i) Notwithstanding any disclosure requirements of subsection (h), churches are exempt from the requirements of this section unless the church's expenditures are used to influence the outcome of an election. Nothing herein shall require a church to disclose the identities, donations, or contributions of members of the church. As used in this section, the term "church" is defined in accordance with and recognized by Internal Revenue Service guidelines and regulations.

(j) Notwithstanding the disclosure requirements of this section, the provisions of this section shall not be interpreted to nor shall they require any disclosure for expenses incurred for any electioneering communication used by any membership or trade organization to communicate with or inform its members, its members' families, or its members' employees or for any electioneering communication by a business entity of any type to its employees or stockholders or their families.

~~**(k)** The corporate contribution limits contained in Sections 10A-21-1.02, 10A-21-1.03, and 10A-21-1.04 shall not apply in any respect to an electioneering communication; provided, however, the corporate contribution limits contained in Sections 10A-21-1.02, 10A-21-1.03, and 10A-21-1.04 shall continue in force and effect for contributions by corporations to principal campaign committees, political committees, and to political parties.~~

(~~l~~k) Each report required by this section shall include all reportable transactions occurring since the most recent prior report; however, duplicate reporting is not required by this section. A political action committee or principal campaign committee that is required to file a daily report is not required to also file a weekly report for the week preceding an election specified in subdivision (3) of subsection (a); a committee required to file a weekly report is not required to also file a monthly report ~~for~~ in the month in which the election is held; and a committee required to file a monthly report is not required to also file an annual report ~~for~~ in the year in which the election is held. The monetary balance in a report of each committee shall begin at the monetary amount appearing in the most recent prior report.

§ 17-5-8.1. Electronic filing of financial reports; rules[7]

(a) Commencing with the 2014 election cycle, all statements, reports of contributions, and expenditures, and other filings required to be filed pursuant to Chapter 5, Title 17, Code of Alabama 1975, shall be submitted electronically over the Internet by a computer file containing the report information in a format and medium to be prescribed by the Secretary of State.

(b) Commencing with the 2014 election cycle, the Secretary of State shall implement and maintain an electronic database accessible by the public through the Secretary of State's website which provides the capability of search and retrieval of all statements, reports, and other filings required to be filed with the Secretary of State pursuant to Chapter 5. The searchable database shall provide the ability to search by a recipient's name, a contributor's name, a contributor's or recipient's zip code, and dates of contributions.

(c) Unless otherwise included in a report made pursuant to subsection (a) of Section 17-5-8, Code of Alabama 1975, the principal campaign committee or political action committee shall file a report disclosing the receipt of any single contribution of twenty thousand dollars ($20,000) or more. These reports shall disclose the same information required by Section 17-5-8, Code of Alabama 1975, and shall be filed within two business days of receipt of the contribution. Beginning with the 2014 election cycle these reports shall be filed electronically.

(d) Beginning with the 2012 election cycle, a principal campaign committee or political action committee shall close its books in order to complete its reports two days prior to the specified reporting dates.

(e) The Secretary of State may promulgate administrative rules pursuant to the Alabama Administrative Procedure Act as are necessary to implement and administer this act.

[7] This section was added by Act No. 2011-687.

§ 17-5-8.2. Legislative findings[8]

(a) The Legislature determines that there is a compelling state and public interest in the disclosure of the source of funds used to advertise or otherwise influence public opinion with regard to elections as defined in Section 17-5-2(3). The Legislature further finds that these compelling interests should be designed to protect the public's right to know while protecting free speech of individuals as guaranteed in the U.S. Constitution and the Constitution of Alabama of 1901.

(b) Currently, the Fair Campaign Practices Act, as provided in this chapter, commencing with Section 17-5-1, et seq., regulates the disclosure of contributions and expenditures made for the purpose of influencing the outcome of an election. This ~~section and Sections 17-5-2, 17-5-8, and 17-5-12, as amended by Act 2011-697 are~~ chapter is also intended to regulate the disclosure of contributions and expenditures for electioneering communications ~~which currently do not fall within the ambit of the Fair Campaign Practices Act~~.

(c) The Legislature finds and declares that Alabama voters have a right to know who pays for the costs of electioneering communications.

[8] This section was added by Act No. 2011-697 and modified by Act No. 2013-311. The revisions from 2011 are highlighted in gray. The revisions from 2013 are shown in ~~redline~~ and blueline format.

§ 17-5-9. Filing of statements and reports; place of filing[9]

(a) All statements and reports, including amendments, required of principal campaign committees under the provisions of this chapter shall be filed with the Secretary of State in the case of candidates for state office or state elected officials, and in the case of candidates for local office or local elected officials, with the judge of probate of the county in which the office is sought.

(b) Political action committees, which seek to influence an election for local office or to influence a proposition regarding a single county, shall file all reports and statements, including amendments, with the judge of probate of the county affected. All other political action committees, except as provided in subsection (a) above, shall file reports and statements with the Secretary of State.

(c) In the case of candidates for a municipal office where the municipality is located in more than one county, the statements and reports shall be filed in the county where the city hall of the municipality is located. The judge of probate of the county where the report is filed, if the municipality is located in more than one county, shall provide a copy of the report to the judge of probate of the other county or counties where the municipality is located.

(d) Commencing with the 2014 election cycle, all principal campaign committees and political action committees that file with the judge of probate, other than candidates for municipal office, may choose instead of file electronically with the Secretary of State pursuant to this chapter. Any such principal campaign committee or political action committee that chooses to file electronically with the Secretary of State shall first provide notice to the appropriate judge of probate, in a manner prescribed by the judge of probate, indicating that choice and shall continue to file electronically with the Secretary of State until terminated or dissolved pursuant to this chapter.

[9] This section was modified by Act No. 2013-311.

§ 17-5-10. Public inspection of reports; date of receipt

(a) Each report or statement shall be preserved and a copy made available for public inspection by the Secretary of State or judge of probate, whichever is applicable.

(b) The date of filing of a report or statement filed pursuant to this chapter shall be deemed to be the date of receipt by the Secretary of State or judge of probate, as the case may be; provided, that any report or statement filed by certified or registered mail shall be deemed to be filed in a timely fashion if the date of the United States postmark stamped on such report or statement is at least two days prior to the required filing date, and if such report or statement is properly addressed with postage prepaid.

§ 17-5-11. Duties of Secretary of State and judge of probate

The Secretary of State and the judge of probate shall have the following duties:

(1) To accept and file all reports and statements, including amendments, required by the provisions of this chapter to be filed with them and to accept any information voluntarily supplied that exceeds the requirements of this chapter.

(2) To make each statement and report filed by any principal campaign committee or political action committee or elected official available for public inspection and copying during regular office hours, any such copying to be at the expense of the person requesting copies; except that any information copied from such reports or statements may not be sold or used by any political party, principal campaign committee, or political action committee for the purposes of soliciting contributions or for commercial purposes, without the express written permission of the candidate or the committee reporting such information.

(3) To furnish any forms to be used in complying with the provisions of this chapter. The expenses incurred by the Secretary of State in furnishing forms, accepting statements and reports, filing statements and reports, and making such statements and reports available to the public shall be paid from moneys designated to the distribution of public documents.

§ 17-5-12. Paid advertisements to be identified as such[10]

(a) Any paid political advertisement or electioneering communication appearing in any print media or broadcast on any electronic media shall clearly and distinctly identify the entity responsible for paying for the advertisement or electioneering communication. It shall be unlawful for any person, nonprofit corporation, entity, candidate, principal campaign committee, ~~nonprofit corporation, entity,~~ or other political action committee to broadcast, publish, or circulate any campaign literature, ~~political~~ advertisement, or electioneering communication without a notice appearing on the printed matter with a clear and unmistakable identification of the entity responsible for directly paying for the advertisement or electioneering communication, or on the broadcast at the beginning, during, or end of a radio or television spot, stating that the communication was a paid advertisement, clearly identifying the entity directly responsible for paying for the advertisement or electioneering communication, and giving the identification of the person, nonprofit corporation, entity, principal campaign committee, or other political action committee or entity that paid for such communication.

(b) This section does not apply to any political advertisement or electioneering communication used by a candidate and the candidate's supporters or by a political committee if the message or advertisement is:

(1) Designed to be worn by a person.

(2) Placed as a paid link on an Internet website, provided the message or advertisement is no more than 200 characters in length and the link directs the user to another Internet website that complies with subsection (a).

(3) Placed as a graphic or picture link where compliance with the requirements of this section is not reasonably practical due to the size of the graphic or picture link and the link directs the user to another Internet website that complies with subdivision (1).

(4) Placed at no cost on an Internet website for which there is no cost to post content for public users.

(5) Placed or distributed on an unpaid profile account which is available to the public without charge or on a social networking Internet website, as long as the source of the message or advertisement is patently clear from the content or format of the message or advertisement. A candidate or political committee may prominently display a statement indicating that the website or account is an official website or account of the candidate or political committee and is approved by the candidate or political committee. A website or account may not be marked as official without prior approval by the candidate or political committee.

(6) Distributed as a text message or other message via Short Message Service, provided the message is no more than 200 characters in length or requires the recipient to sign up or opt in to receive it.

[10] This section was modified by Act Nos. 2011-697 and 2013-311. The revisions from 2011 are highlighted in gray. The revisions from 2013 are shown in ~~redline~~ and blueline format.

(7) Connected with or included in any software application or accompanying function, provided that the user signs up, opts in, downloads, or otherwise accesses the application from or through a website that complies with subsection (a).

(8) Sent by a third-party user from or through a campaign or committee's website, provided the website complies with subsection (a).

(9) Contained in or distributed through any other technology related item, service, or device for which compliance with subdivision (1) is not reasonably practical due to the size or nature of such item, service, or device as available, or the means of displaying the message or advertisement makes compliance with subdivision (1) impracticable.

§ 17-5-13. Cards, pamphlets, circulars, etc., to bear name of candidate, committee, etc.

It shall be unlawful for any person, candidate, principal campaign committee, or political action committee to publish or distribute or display, or cause to be published or distributed or displayed, any card, pamphlet, circular, poster, or other printed material relating to or concerning any election, which does not contain the identification required by Section 17-5-2(a)(5) of the person, candidate, principal campaign committee, or political action committee responsible for the publication or distribution or display of the same.

§ 17-5-14. *[Corporate and business entity political activities]* [11]

~~A political action committee may be established by a corporation, subject to the provisions of this chapter.~~

(a) A corporation incorporated or organized under the laws of this state, or doing business in this state, may make a contribution or expenditure to or on behalf of any candidate or political action committee in the same manner that an individual is permitted to make under the laws of this state, except as otherwise expressly prohibited by subsection (c).

(b) Any corporation may establish a political action committee, subject to the provisions of this section. Any corporation or any officer, employee, or agent acting on behalf of such corporation, is also permitted to give, pay, expend, or contribute money, services, or anything of value for the purposes of establishing, administering, or soliciting voluntary contributions to a separate, segregated fund to be utilized for political purposes as permitted by Section 17-5-14.1.

(c) A utility regulated by the public service commission may not make a contribution to any candidate for the public service commission, but shall otherwise be entitled to take any action permitted corporations under this section.

[11] This section was modified by Act No. 2013-311.

§ 17-5-14.1. *[Establishment of separate, segregated political funds]* [12]

(a) Any business or nonprofit corporation, incorporated under the laws of or doing business in this state, or any officer or agent acting on behalf of the corporation may give, pay, expend, or contribute money, services, anything of value for the purposes of establishing, administering, or soliciting voluntary contributions to a separate, segregated fund which can be utilized for political purposes (i) to aid or promote the nomination or election of any person, including an incumbent political officeholder or any other person who is or becomes a candidate for political office; or (ii) to aid or promote the interest or success, or defeat of any political party or political proposition. Any separate, segregated fund established hereunder for any of the above enumerated purposes shall be established and administered pursuant to the following requirements and prohibitions:

(1) Any such business or nonprofit corporation, or any officer or agent acting on behalf of such business or nonprofit corporation, may solicit voluntary contributions to the fund only from the corporation's, or its affiliates', stockholders and their families and its employees and their families; or in the case of a nonprofit corporation, its members and their employees. However, the funds may accept voluntary contributions from any individuals.

(2) The custodians of any separate, segregated political fund established hereunder shall file with the Secretary of State such financial disclosure reports or statements now required of a candidate for public office. Filing with the Secretary of State a copy of the information required to be filed with the Federal Election Commission by such separate, segregated fund shall constitute compliance with the reporting provisions of this section.

(b) It shall be unlawful:

(1) For any separate, segregated political fund established pursuant to this section or for any person acting on behalf of the fund to solicit or secure any money or anything of value by physical force, job discrimination, or financial reprisals, or by threats thereof; by dues, fees, or other moneys required as a condition of employment; or by moneys obtained in any commercial transaction;

(2) For any person soliciting contributions to the fund to fail to inform any person being solicited of the political purposes of the fund at the time of the solicitation;

(3) For any person soliciting for a contribution to the fund to fail to inform the person being solicited, at the time of the solicitation, of his or her right to refuse to contribute without any reprisal; and

(4) For any corporation regulated by the Public Service Commission to pass on to its customers any contribution made for the purposes of establishing, administering, or soliciting voluntary contributions to a separate, segregated fund to be utilized for political purposes.

[12] This section was added by Act No. 2013-311.

§ 17-5-15. Making or accepting contributions by one person in name of another prohibited; exception *[PAC-to-PAC ban]* [13]

(a) It shall be unlawful for any person, acting for himself or herself or on behalf of any entity, to make a contribution in the name of another person or entity, or knowingly permit his or her name, or the entity's name, to be used to effect such a contribution made by one person or entity in the name of another person or entity, or for any candidate, principal campaign committee, or political action committee to knowingly accept a contribution made by one person or entity in the name of another person or entity; provided, however, that nothing in this chapter ~~would prohibit~~ prohibits any person from soliciting and receiving contributions from other persons for the purpose of making expenditures to a candidate, political campaign committee, political action committee, or elected state or local official required to file reports pursuant to Section 17-5-8.

(b) It shall be unlawful for any political action committee~~, 527 organization, or private foundation,~~ or tax exempt political organization under 26 U.S.C. § 527 including a principal campaign committee, or any person authorized to make an expenditure on behalf of such political action committee or 527 organization, to make a contribution, expenditure, or any other transfer of funds to any other political action committee~~,~~ or 527 organization~~, or private foundation~~. It shall be unlawful for any principal campaign committee or any person authorized to make an expenditure on behalf of such principal campaign committee to make a contribution, expenditure, or ~~any~~ other transfer of funds to any other principal campaign committee, except where the contribution, expenditure, or any other transfer of funds is made from a principal campaign committee to another principal campaign committee on behalf of the same person. Notwithstanding the foregoing, a political action committee that is not a principal campaign committee may make contributions, expenditures, or other transfers of funds to a principal campaign committee; and a separate segregated fund established by a corporation under federal law, if the fund does not receive any contributions from within this state other than contributions from its employees and directors, is not restricted by this subsection in the amount it may transfer to a political action committee established under the provisions of Section ~~10A-21-1.01~~ 17-5-14.1 by the same or an affiliated corporation.

[13] This section was modified by Act Nos. 2010-765 and 2013-311. The revisions from 2010 are highlighted in gray. The revisions from 2013 are shown in ~~redline~~ and blueline format.

§ 17-5-15.1. Use of funds raised by a federal candidate's campaign committee[14]

(a) A principal campaign committee of a state or local candidate and any person authorized to make an expenditure on its behalf may not receive or spend, in a campaign for state or local office, campaign funds in excess of one thousand dollars ($1,000) that were raised by a principal campaign committee of a federal candidate.

(b) Any ~~receipt or expenditure of~~ person who intentionally receives or expends campaign funds in violation of subsection (a) shall be guilty, upon conviction, of a Class C felony.

[14] This section was added by Act No. 2010-765 and modified by Act No. 2013-311. The revisions from 2010 are highlighted in gray. The revisions from 2013 are shown in ~~redline~~ and blueline format.

§ 17-5-16. Fraudulent misrepresentation as acting for candidate, etc., prohibited[15]

(a) It shall be unlawful for any person fraudulently to misrepresent himself or herself, or any other person or organization with which he or she is affiliated, as speaking or writing or otherwise acting for or on behalf of any candidate, principal campaign committee, political action committee, or political party, or agent or employee thereof, in a manner which is damaging or is intended to be damaging to such other candidate, principal campaign committee, political action committee, or political party.

(b) It shall be unlawful for any automated or pre-recorded communication initiated, conducted, or transmitted through an automated telephone dialing service to be conducted without providing clear notice at the ending of the phone call that the communication was a paid political advertisement and clearly identifying the person, nonprofit corporation, entity, principal campaign committee, or political action committee that paid for such communication.

(c) It shall be unlawful for any person or entity to knowingly misrepresent, in any automated or pre-recorded communication that is a political advertisement and that is initiated via an automated telephone dialing service, the identification of the person, nonprofit corporation, entity, principal campaign committee, or political action committee that paid for such communication.

(d) The Attorney General of the State of Alabama shall have full power to investigate and enforce violations of this section and any owner, employer, agent, or representative of any automated dialing service found to be in violation of this section shall be guilty upon conviction of a Class A misdemeanor as provided in Section ~~17-17-35(a)~~ 17-5-19.

[15] This section was modified by Act Nos. 2012-461 and 2013-311. The revisions from 2012 are highlighted in gray. The revisions from 2013 are shown in ~~redline~~ and blueline format.

§ 17-5-17. Solicitation by force, job discrimination, threats, etc., prohibited

It shall be unlawful for any person, principal campaign committee, or political action committee established pursuant to this chapter or for any person acting on behalf of such person or committee, to solicit or secure any money or anything of value by physical force, job discrimination or financial reprisals, or by threats thereof or by the imposition of dues, fees, or other moneys required as a condition of employment.

§ 17-5-18. ~~Failure to file required statement or report; nonissuance or revocation of certificate of election or nomination~~ *[Repealed]* [16]

~~A certificate of election or nomination shall not be issued to any person elected or nominated to state or local office who shall fail to file any statement or report required by this chapter. A certificate of election or nomination already issued to any person elected or nominated to state or local office who fails to file any statement or report required by this chapter shall be revoked.~~

[16] This section was deleted by Act No. 2013-311.

§ 17-5-19. *[Enforcement of violations]* [17]

~~It is the intention of the Legislature by the passage of this chapter that its provisions be construed in pari materia with other laws regulating political contributions, corporations, or political contributions by corporations.~~

(a) Except as otherwise provided in this section, a person who intentionally violates any provision of Chapter 5 shall be guilty, upon conviction, of a Class A misdemeanor.

(b) A person who intentionally violates any reporting requirement of Sections 17-5-4, 17-5-5, or 17-5-8 shall be guilty, upon conviction, of a Class A misdemeanor. A person's failure to promptly file a required report upon discovering or receiving notice from any person that the report has not been filed, or the failure to promptly correct an omission, error, or other discrepancy in a filed report upon discovering or receiving notice of the discrepancy, shall create a rebuttable presumption of intent to violate the applicable reporting requirement.

(c) Any person who intentionally violates Section 17-5-7 shall be guilty, upon conviction, of a Class B felony.

(d) A person who fails to timely or accurately file any report required by this chapter shall be assessed a civil penalty of the greater of three hundred dollars ($300) or ten percent of the amount not properly reported for a first offense in an election cycle, six hundred dollars ($600) or 15 percent of the amount not properly reported for a second offense in an election cycle, and one thousand two hundred dollars ($1,200) or 20 percent of the amount not properly reported for a third or subsequent offense in an election cycle. A fourth failure to timely or accurately file a report in an election cycle shall create a rebuttable presumption of intent to violate the reporting requirements of this chapter. Civil penalties shall be paid to the appropriate filing official. All penalties collected by a judge of probate shall be distributed to that county's general fund, and all penalties collected by the Secretary of State shall be distributed to the State General Fund. A person who voluntarily files an amended report to correct an error in an otherwise timely filed report, without being prompted by a filing official shall not be subjected to a civil penalty under this subsection, so long as, in the case of a candidate, the corrected report is filed prior to the election at issue, and so long as, in the case of a political action committee, the corrected report is filed prior to the election which the contribution was given to influence.

(e) The Attorney General or district attorney for the appropriate jurisdiction may prosecute violations of Chapter 5. Venue for cases involving violations of Chapter 5 shall be in the county in which the violation occurred or the county in which the alleged violator resides or is incorporated. If the alleged violator resides or is incorporated outside of the State of Alabama or if the violation or violations occurred outside the State of Alabama, venue shall be in Montgomery County.

(f) No prosecution for violation of Chapter 5 shall be commenced later than two years after the date of violation. Notwithstanding the foregoing, a prosecution brought pursuant to Section 17-5-7 shall be commenced within four years after the commission of the offense.

[17] This section was modified by Act No. 2013-311.

§ 17-5-20. *[Designated filing agents]* [18]

(a) A candidate, or in the case of a political action committee, the chair or treasurer, may appoint a designated filing agent on a form prescribed by the Secretary of State. Upon receiving a notice of appointment of designated filing agent, the Secretary of State, as soon as practicable, shall take the necessary steps to enable the designated filing agent to electronically submit any report or other filing required by this chapter on behalf of his or her principal.

(b) The submission of a timely, complete, and correct report or other filing required by this chapter by a designated filing agent shall satisfy the filing or reporting requirement of the designated filing agent's principal; however, the appointment of a designated filing agent does not itself absolve any person having a duty to submit any report or other filing under this chapter of liability for failure to timely submit such filing, for filing a false, incomplete, or inaccurate report, or for any other violation under this chapter.

(c) The submission of a report or other filing required by this chapter by a designated filing agent creates a rebuttable presumption that the submission was approved and intended by the candidate, his or her principal campaign committee, or the political action committee or treasurer thereof. Notwithstanding the foregoing, it is a defense to prosecution that the designated filing agent acted beyond the scope of his or her authority.

[18] This section was added by Act No. 2013-311.

§ 17-17-35. ~~Unfair campaign practices; violation of Fair Campaign Practice Act; venue; time for prosecution~~ *[Repealed]* [19]

~~**(a)** A person who violates any provision of Chapter 5, other than Section 17-5-7, or a reporting requirement under Sections 17-5-4, 17-5-5, and 17-5-8, shall be guilty, upon conviction, of a Class A misdemeanor.~~

~~**(b)** A person who violates any reporting requirement of Sections 17-5-4, 17-5-5, and 17-5-8 shall be guilty, upon conviction, of a Class B misdemeanor.~~

~~**(c)** Any person who intentionally violates Section 17-5-7 shall be guilty, upon conviction, of a Class B felony.~~

~~**(d)** The Attorney General may prosecute violations of Chapter 5. Venue for cases involving violations of Chapter 5 shall be in the county in which the alleged violator resides.~~

~~**(e)** No prosecution for violation of Chapter 5 shall be commenced later than two years after the date of violation. Notwithstanding the foregoing, a prosecution brought pursuant to Section 17-5-7 shall be commenced within four years after the commission of the offense. Additionally, a prosecution brought pursuant to Section 17-5-7 shall be prosecuted by the Attorney General or the district attorney for the appropriate jurisdiction, and the venue for any action pursuant to this section shall be in the county in which the alleged violation occurred, or in those cases where the violation or violations occurred outside the State of Alabama, in Montgomery County.~~

[19] This section was deleted by Act No. 2013-311with the substantive issues now addressed in Section 17-5-19.

§ 10A-21-1.01 -- Establishment of segregated, separate political funds; voluntary contributions; filing of disclosure reports; violations (*formerly § 10-1-2*)[20]

(a) Any business or nonprofit corporation, incorporated under the laws of or doing business in this state, or any officer or agent acting in behalf of the corporation may give, pay, expend, or contribute money, services, anything of value for the purposes of establishing, administering, or soliciting voluntary contributions to a separate, segregated fund to be utilized for political purposes (i) to aid or promote the nomination or election of any person, including an incumbent political officeholder or any other person who is or becomes a candidate for political office; or (ii) to aid or promote the interest or success, or defeat of any political party or political proposition. Any separate, segregated fund established hereunder for any of the above enumerated purposes shall be established and administered pursuant to the following requirements and prohibitions

(**1)** Any business or nonprofit corporation incorporated under the laws of or doing business in this state, or any officer or agent acting in behalf of the corporation which has established a separate, segregated political fund or any separate, segregated fund established by the corporation or officer or agent acting in behalf of the corporation may solicit voluntary contributions to the fund only from the corporation's stockholders and their families and its employees and their families; or in the case of a nonprofit corporation, its members and their employees. However, the funds may accept voluntary contributions from any individuals or from any other separate, segregated political funds.

(2) The custodians of any separate, segregated political fund established hereunder shall file with the Office of the Secretary of State of the State of Alabama such financial disclosure reports or statements now required of a candidate for public office. Filing with the Secretary of State a copy of the information required to be filed with the Federal Election Commission by such separate, segregated fund shall constitute compliance with the reporting provisions of this section.

(b) It shall be unlawful:

(1) For any separate, segregated political fund established pursuant to this section or for any person acting in behalf of the fund to solicit or secure any money or anything of value by physical force, job discrimination, or financial reprisals, or by threats thereof; by dues, fees, or other moneys required as a condition of employment; or by moneys obtained in any commercial transaction;

(2) For any person soliciting contributions to the fund to fail to inform any person being solicited of the political purposes of the fund at the time of the solicitation;

(3) For any person soliciting for a contribution to the fund to fail to inform the person being solicited, at the time of the solicitation, of his or her right to refuse to contribute without any reprisal; and

(4) For any corporation regulated by the Public Service Commission to pass on to its customers any contribution made for the purpose of establishing, administering, or soliciting voluntary contributions to a separate, segregated fund to be utilized for political purposes.

[20] This section was deleted by Act No. 2013-311 with most of this provision transferred to Section 17-5-14.1.

§ 10A-21-1.02 – Giving aid or contribution to political party or candidate, etc.; penalty; exception for voluntary separate political fund *(formerly § 10-2A-70)*[21]

Any corporation, incorporated company, or incorporated association, by whatever name it may be known, incorporated or organized under the laws of this state or doing business in this state, or any servant, agent, employee, or officer thereof, who shall give, donate, appropriate, or furnish, directly or indirectly, any money, securities, funds, or property of the corporation, incorporated company, or incorporated association for the purpose of aiding any political party or any candidate for any public office or any candidate for any nomination for any public office by any political party or who shall give, donate, appropriate, or furnish, directly or indirectly, any money, security, funds, or property of the corporation, incorporated company, or association to any committee or person as a contribution to the expenses of any political party or any candidate, representative, or committee of any political party or candidate for nomination by any political party or any committee or other person acting in behalf of the candidate shall be guilty of a misdemeanor and, on conviction, shall be fined not less than one hundred dollars ($100), nor more than two thousand dollars ($2,000) at the discretion of the jury trying the case. Notwithstanding the provisions of this section, it shall not be unlawful for any business or nonprofit corporation, incorporated under the laws of or doing business in this state, or any officer or agent acting in behalf of the corporation to give, pay, expend, or contribute money, services, or anything of value for the purposes of establishing, administering, or soliciting voluntary contributions to a separate, segregated fund to be utilized for political purposes as permitted by Section 10A-21-1.01. Provided, that no corporate funds will be a part of such separate, segregated fund.

§ 10A-21-1.03 – Limitation on amount of political contribution; provisions supplemental (*formerly § 10-2A-70.1*)

(a) It shall be legal and permissible for any corporation, other than a public utility that is regulated by the Public Service Commission, whether for profit or nonprofit, incorporated under the laws of or doing business in this state, to directly give, pay, expend, or contribute any money or other valuable thing in any amount not to exceed five hundred dollars ($500) to any one candidate or political party, or to aid or defeat any question or proposition in any one election in order to aid, promote, or prevent the nomination or election of any person, or defeat any question or proposition submitted to the vote of the people, or in order to aid, promote, or antagonize the interest of any political party. In the case of a group of parent-subsidiary corporations, the five hundred dollars ($500) limitation described above shall apply to the entire group. A corporation which is a public utility because it owns, controls, or operates a railroad shall not make a contribution to any candidate for the Public Service Commission, but shall otherwise be entitled to take any action permitted nonpublic utilities under this section.

(b) The provisions of this section are supplemental. It shall be construed in pari materia with other laws regulating political contributions; however, those laws or parts of laws which are in direct conflict or inconsistent with this section are hereby repealed.

§ 10A-21-1.04 – Corporation contributions to candidates, parties, etc. *(formerly § 10-2A-70.2)*

It is the intent of the Legislature that the provisions hereof shall not repeal nor be construed to repeal any provision of Section 10A-21-1.03. Provided further, however, notwithstanding any provision hereof or any other law to the contrary, it shall be legal and permissible for any corporation, other than a public utility that is regulated by the Public Service Commission, whether for profit or nonprofit, incorporated under the laws of or doing business in this state, to directly give, pay, expend, or contribute, any money or other valuable thing in any amount not to exceed five hundred dollars ($500) to any one candidate or political party or political committee. It shall also be legal and permissible for nonprofit corporations to directly give, pay, extend, or contribute, any money or other valuable thing in any amount in order to aid, promote, or defeat any question or proposition submitted to the vote of the people. A corporation which is a public utility because it owns, controls, or operates a railroad shall not make a contribution to any candidate for the Public Service Commission, but shall otherwise be entitled to take any action permitted nonpublic utilities under this section.

[21] The three sections on this page were deleted by Act No. 2013-311.

Detailed Summary of SB 445
(2013 Revisions)

Summary of Fair Campaign Practices Act Revisions Under Act No. 2013-311 (SB 445)

Act No. 2013-311 revised a number of provisions of the Fair Campaign Practices Act (FCPA). This summary reviews the major revisions included in this Act and is organized around the following topic areas: (1) technical changes; (2) candidate reporting revisions; (3) enforcement revisions; (4) legislative caucus issues; and (5) other substantive revisions. This Act goes into effect on August 1, 2013.

A. Technical Changes

Designated filing agents. This Act allows for a designated filing agent to electronically file reports. This change is made necessary by the electronic reporting system that candidates will start using in the 2014 cycle. This language was developed in conjunction with the Secretary of State's office so that a candidate or PAC can designate a person to submit the report (in other words, "hit send" on the electronic submission). *(See, definition of designated filing agent at 17-5-2(a)(3) on page 6 and the procedure in 17-5-20 on pages 41-42)*

Fundraising blackout. This Act changes the legislative fundraising blackout to apply only to legislative and statewide candidates. Previously, the campaign fundraising blackout period during the legislative session had applied to legislators and statewide candidates as well as to candidates for offices like circuit and district judges, circuit clerks, and district attorneys who have nothing to do with the legislative process. This Act changes that provision so that the blackout applies only to legislative and statewide candidates. *(See, 17-5-7(b)(2) on pages 15-16)*

Clearing up time when final daily report before an election is due. When the daily reports were added to the FCPA in 2011, the deadline for the final daily report was set at 12:01 a.m. on the day prior to the election (in other words, just after midnight when Sunday turns into Monday) which is impractical. This Act changes the time when the report is due to noon on that Monday. *(See, 17-5-8(a)(3)a. on pages 18-19)*

Duplicative filings in multi-county municipalities. This Act eliminates duplicative filings for candidates in municipalities that are located in more than one county. Previously, those municipal candidates had to file with the Judge of Probate for each county that the municipality is located in. This provision provides that the candidates are required to file only with the Judge of Probate in the county in which the city hall is located. *(See, 17-5-9(c) on pages 26-27)*

Duplicative filings for PACs and PCCs. This Act ensures that candidates do not have to file a duplicative monthly report covering the preceding month when they already have filed weekly reports that would include the same information. *(See, 17-5-8(k) on pages 24-25)*

Allows local (not municipal) candidates the option of filing electronically. This Act allows a candidate who is supposed to file with the Judge of Probate the option of filing electronically

with the Secretary of State. If the candidate wants to do this they must also file notice with the Judge of Probate that they will be filing with the Secretary of State. This Act provides that municipal candidates do not have this option. *(See, 17-5-9(d) on page 27)*

Moves provisions dealing with corporations from the Business Entities Code (Title 10A) to the FCPA (Title 17). Previously, there were several code sections in Title 10A (Business and Nonprofit Entities Code) that related to how corporations may participate in election activities. This Act moves those provisions to the FCPA (in Title 17) which contains all other election-related laws. *(See, 17-5-14 on pages 30-31 and 17-5-14.1 on pages 39-41)*

Transfers enforcement provisions from Chapter 17 to Chapter 5 (the FCPA). Previously, the enforcement mechanisms for violations of the FCPA were located in Chapter 17 of Title 17. This Act moves these provisions to Chapter 5 which contains other substantive provisions of the FCPA to make it easier to locate the applicable provisions. *(See, 17-5-19 on pages 34-37)*

Removes the confusing "private foundation" restriction in the PAC-to-PAC ban. The PAC-to-PAC ban includes a prohibition on any "private foundation" giving money to another private foundation. The inclusion of this provision has had the unintended consequence of prohibiting this subset of charitable foundations from donating to each other. "Private foundations" are restricted by federal tax law from participating in political campaigns. If a private foundation supports candidates then it becomes a PAC, and as a result, it would still be prohibited from transferring money to another PAC. *(See, 17-5-15(b) on pages 32-33)*

Reinforces PAC-to-PAC ban prohibition. The 2010 PAC-to-PAC ban inadvertently left in place a provision that arguably permitted certain corporate and association PACs (those that are separate, segregated funds) to transfer funds among themselves. This Act removes the language that may have permitted those types of transfers. *(See, 17-5-14.1(a)(1) on page 40)*

Clarifies right of business entities to communicate with employees. Prior amendments to the FCPA arguably limited the ability of business entities to communicate with employees on candidates in the same way that associations communicate with their members. This Act clarifies the permissibility of such communications. *(See, 17-5-8(j) on pages 23-24)*

Revises reporting schedule to ensure candidates file annual reports following the general election. Prior amendments to the FCPA that attempted to clean up duplicative filings inadvertently did not require a candidate to file an annual report for the year in which an election occurred. This Act corrects that issue in the FCPA. *(See, 17-5-8(k) on page 24)*

B. Candidate Reporting Revisions

This Act requires any candidate who raises or expends $1,000 to file disclosure reports. Previously, there was a wide variety of thresholds. This Act implements a uniform threshold of $1,000 for all candidates for any office, which will result in candidates filing disclosures earlier in the process. The prior thresholds were:

- $25,000 for state office other than those elected by circuit or district

- $5,000 for state office elected by circuit or district
- $10,000 for Senate
- $5,000 for House of Representatives
- $1,000 for local office

(See, definition of "Candidate" in 17-5-2(a)(1) on pages 2-3)

C. Enforcement Revisions

Clarifies person responsible for compliance. Prosecutors perceived there to be a gap in the law about who could be held responsible for filing reports. This Act closes that gap by making it clear that the candidate or PAC treasurer is responsible for these filings. *(See, for example 17-5-5(a) on pages 11-12 and 17-5-8(a) on pages 17-18)*

Ensures enforceability by requiring intent for criminal violations. Under the previous law, many of the criminal violations contained in the FCPA did not include any requirement that there be intent on the part of the person acting. This Act requires that violations must be intentional in order to be prosecuted. (*See, 17-5-19 on pages 34-37)*

Repeals so-called candidate "death penalty". This Act repeals Section 17-5-18, which is the so-called candidate "death penalty" for errors in filing. This provision is often criticized and seldom enforced. *(See, Section 3(b) of Act on page 43)*

Creates a new administrative fine system to encourage the timely and accurate filing of reports. Under the previous law, there was little, if any, enforcement of the requirement to file the various reports required under the FCPA on time or accurately other than a separate provision that could have a candidate removed from the ballot (or out of office) if they did not cure the problem before the election. This Act provides a comprehensive enforcement scheme that includes administrative fines for minor violations and criminal penalties for intentional violations. The Act also makes clear that fines are paid to the county or General Fund (and not to the filing official). Additionally, the Act permits a candidate or PAC to correct an otherwise timely filed report so long as it is initiated by the filer (as opposed to the filing official) and corrected prior to the election. The administrative fine schedule is below:

- 1st offense = Greater of $300 or 10% of amount not reported
- 2nd offense = Greater of $600 or 15% of amount not reported
- 3rd offense and subsequent offenses = Greater of $1,200 or 20% of amount not reported
- 4th offense = Establishes a rebuttable presumption of intent necessary for criminal violation

(See, 17-5-19(d) on page 35-36)

Enforcement for out of state violators. This Act enhances the ability to prosecute violations involving out-of-state violators by fixing the venue for prosecutions in Montgomery. *(See, 17-5-19(e) on page 36)*

Conforms PAC and candidate safe harbor provisions. This Act provides a safe harbor for candidates and PACs to voluntarily correct an error that they self-identify prior to the election. *(See, 17-5-19(d) on pages 35-36)*

D. Caucus Issues

Provides for the registration of legislative caucuses. Legislative caucuses have existed for many years without any specific provisions of law for identifying them or their purposes. In the past, some caucuses that attempted to specifically influence elections actually became PACs by operation of law. Today, caucuses are more likely to be organized as nonprofits and focus on policy issues. This Act provides for the registration of caucuses and prevents them from working to influence elections. *(See, new 17-5-5.1 on pages 37-38)*

Clarifies that if a legislative caucus participates in elections, then it is a PAC. In the event a legislative caucus crosses the line into activity that is intended to influence the outcome of elections, then it is treated and regulated as a PAC. *(See, new 17-5-5.1 on pages 37-38)*

Allows a candidate to donate excess campaign funds to a legislative caucus. This Act allows a candidate to give excess campaign funds to a legislative caucus. This can be done only if the caucus registers as provided by this Act and if the caucus does not attempt to influence the outcome of an election. *(See, 17-5-7(a)(6) on page 15)*

E. Other Substantive Revisions

Repeals corporate contribution limits. This Act provides that corporations are regulated in the same manner as other entities (e.g., LLCs and partnerships) and individuals by removing restrictions (such as the $500 corporate contribution limit). (*See, 17-5-14 on pages 30-31)*

Payment for party events. This Act expands and clarifies the ability of candidates to participate in state and local party events. The 2010 FCPA revisions allowed candidates to use campaign funds to pay qualifying fees and to buy tickets to party dinners by expending up to $5,000 over the course of their term of office. Since terms of office vary, this Act would allow expenditures of up to $5,000 every 2 years. *(See, 17-5-7(d) on pages 16-17)*

Refund provision. This Act allows for the return or refund of campaign contributions. Over the years, candidates and PACs have needed to refund unwanted contributions from donors they do not want to accept funds from. This Act makes it clear that contributions can be returned and can be refunded so long as the refunds are itemized and reported. *(See, 17-5-7.1 on pages 38-39)*

Shelby Co. v. Holder

U.S. Supreme Court
Voting Rights Act Decision (June 25, 2013)

Outline of Issues by Winfield J. Sinclair

Majority Opinion by Chief Justice Roberts

Dissenting Opinion by Justice Ginsburg

Yes, Virginia, there is still a Section 5: the Voting Rights Act after *Shelby Co. v. Holder*

Winfield J. Sinclair[1]

The *Shelby County* decision

In *Shelby Co. v. Holder*, 570 U.S. ___, 2013 WL 3184629 (U.S. June 25, 2013) (No. 12-96), the Supreme Court essentially held that the 25 year Section 5 VRA preclearance renewal signed by President Bush on July 27, 2006 was based upon outdated data and therefore the coverage formula (i.e. Section 4(b)[2] of the VRA) does not withstand constitutional scrutiny. The decision was 5-4 with a spirited dissent by Justice Ginsberg. The majority decision specifically noted that discrimination remains illegal under Section 2 ("Our decision in no way affects the permanent, nationwide ban on racial discrimination in voting found in §2" 2013 WL 3184629, at *18, Slip op. at p.24). The Court also noted that Section 5 could be revived by proper Congressional action ("We issue no holding on §5 itself, only on the coverage formula. Congress may draft another formula based on current conditions." 2013 WL 3184629 at *18, Slip op. at p.24).

Section 2 of the VRA

Section 2 forbids any "standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 42 U. S. C. §1973(a).

Section 3[3] of the VRA

Section 3 provides that jurisdictions that were judicially "bailed-in" under Section 3 of the Voting Rights Act (42 U.S.C. 1973a(c)) will still need to seek and obtain preclearance before they may implement a change affecting voting within the meaning of the VRA. Such preclearance decisions are to be made by DOJ or by the Court that required the bail-in.

In *Texas v. Holder*, Civil Action No. 1:11-cv-1303 (D. D.C. pending), on July 3, 2013, the intervenor-defendants (the Texas NAACP, LULAC, and an individual) moved to add Section 3 relief and/or a Section 3 counterclaim in the Texas voter I.D. case pending in the United States District Court for the District of Columbia, seeking to have the court require preclearance for 10 years. DOJ has not taken any position on the motion at the present. Texas will oppose.

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[1] Winfield Sinclair is an Assistant Attorney General for the State of Alabama. Any opinions expressed by him are his alone and do not represent the views, opinions, or positions of the Alabama Attorney General, the State of Alabama, or any agency or representative thereof.

[2] Section 4(a) banned literacy tests, knowledge tests, moral character requirements, and the like.

[3] Section 3's "bail-in" provisions remain active ("Several jurisdictions have been subject to federal preclearance by court orders, including the States of New Mexico and Arkansas." 2013 WL 3184629 at *31, Slip op. at 22, Ginsberg in dissent).

Section 5 of the VRA

What, if anything, still needs to be precleared after Shelby Co. v. Holder?

It is beyond cavil that preclearance is not required for voting changes that occur after June 25, 2013 (the date of *Shelby Co. v. Holder*) ("The formula in that section [Section 4(b)] can no longer be used as a basis for subjecting jurisdictions to preclearance." 2013 WL 3184629 at *18, Slip op. at p.24).

DOJ's official position is that anything pending or submitted for preclearance after *Shelby Co. v. Holder* does not require preclearance:

> With respect to administrative submissions under Section 5 of the Voting Rights Act, that were pending as of June 25, 2013, or received after that date, the Attorney General is providing a written response to jurisdictions that advises:
>
> > On June 25, 2013, the United States Supreme Court held that the coverage formula in Section 4(b) of the Voting Rights Act, 42 U.S.C. 1973b(b), as reauthorized by the Voting Rights Act Reauthorization and Amendments Act of 2006, is unconstitutional and can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. *Shelby County v. Holder*, 570U.S. ___, 2013 WL 3184629 (U.S. June 25, 2013) (No. 12-96). Accordingly, no determination will be made under Section 5 by the Attorney General on the specified change. *Procedures for the Administration of Section 5 of the Voting Rights Act*, 28 C.F.R. 51.35. We further note that this is not a determination on the merits and, therefore, should not be construed as a finding regarding whether the specified change complies with any federal voting rights law.

http://www.justice.gov/crt/about/vot/ (last visited July 9, 2013).

Presumably this means that the DOJ agrees that the unconstitutionality of the VRA renewal invalidated the need for preclearance at some point before June 25, 2013.

Unanswered Questions/Points to Ponder

The unchallenged 1982 VRA renewal renewed Section 5 until July 1, 2007. Was Section 4 constitutional and valid for decisions between July 27, 2006 and July 1, 2007, or was the outdated data used to revisit the formula in 2006 sufficient to taint the preclearance for that period of time?

Dependent upon that determination as to on what date Section 4 became unconstitutional, there are a number of questions that remain to be answered:

If a voting change predates July 27, 2006 or July 1, 2007, (i.e. you stumble upon an old statute, ordinance, annexation, polling place relocation, etc. that wasn't precleared for one reason or another), does it still require preclearance?

If a statute embodying a voting change was objected to or not precleared before July 27, 2006 (or July 1, 2007), can that statute now be put into effect without preclearance?

What is the status of any voting change to which the Department of Justice objected during the gap period (either between July 27, 2006 and June 25, 2013 or July 1, 2007 and June 25, 2013)? Alabama has no such voting changes. The City of Calera is the only Alabama sub-jurisdiction that has such an objection (August 25, 2008; City of Calera, 127 annexations (DOJ-2008-1621)).

What to do with pre-existing preclearance files/databases

Section 5 was originally intended to last for only 5 years (some 40 years ago). For this reason, at first nobody kept databases of voting changes and precleared voting changes in the early days of preclearance are hard to document. As a result, many of us have compiled databases/files of preclearance submissions. Should we keep them? Yes. That documentation will prove useful in the event that (a) we need to preclear a voting change that precedes the date Section 4 became unconstitutional; or, (b) a jurisdiction is "bailed-in" under Section 3.

DOJ Objections[4]
July 27, 2006 to July 1, 2007

Alabama: None.

Alaska: None.

Arizona: None.

California: None.

Florida: None.

Georgia: Sub-jurisdiction only.

Randolph County; September 12, 2006, candidate eligibility and voter registration (DOJ-2006-3856).

Michigan: Sub-jurisdiction only.

Buena Vista Township; December 26, 2007, Closure of an SOS Office that registers voters (Saginaw County): (DOJ-2007-3837).

Mississippi: None.

New Mexico: None.

New York: None.

North Carolina: Sub-jurisdiction only.

Fayetteville; June 25, 2007, 2007 redistricting plan and change (Cumberland County) in number of districts (DOJ-2007-2233).

South Carolina: None.

South Dakota: None.

Texas: None.

[4] DOJ objection information is taken from http://www.justice.gov/crt/about/vot/sec_5/obj_activ.php (last visited July 9, 2013).

DOJ Objections
July 1-2007 to June 25, 2013

Alabama: Sub-jurisdiction only.

City of Calera; August 25, 2008, redistricting plan and 177 annexations (DOJ-2008-1621).

Alaska: None.

Arizona: None.

California: None

Florida: None.

Georgia:

May 29, 2009; voter verification program (DOJ-2008-5243).
December 21, 2012; election date change (DOJ-2012-3262).

Sub-jurisdictions:

Lowndes County; November 30, 2009, redistricting (DOJ-2009-1965).
Greene County; April 13, 2012, 2011 redistricting plan Board of Commissioners and Board of Education (DOJ-2011-4687).
Long County; August 27, 2012; 2012 redistricting plan Board of Commissioners and Board of Education (DOJ-2012-2733).

Louisiana:

August 10, 2009; designation of time period when precinct boundaries cannot be changed (DOJ-2008-3512).

Sub-jurisdictions:

East Feliciana Parish; October 3, 2011, 2011 redistricting plan and voting precincts (DOJ-2011-2055).

Michigan: None.

Mississippi:

March 24, 2010; Majority vote requirement for County BOE's and Trustees in certain school districts (DOJ-2011-1660).

Mississippi (cont.)
Sub-jurisdictions:

Amite County; October 4, 2011, 2011 redistricting (DOJ-2011-1660).
City of Natchez (Adams County); April 30, 2012 2011 redistricting plan (DOJ-2011-5368).
City of Clinton (Hinds County); December 3, 2012 (DOJ-2012-3120).

New Mexico: None.

New York: None.

North Carolina: None.
Sub-jurisdictions:

City of Kingston (withdrawn)
Pitt County; April 30, 2012, change in number of single member school districts (DOJ-2011-2474).

South Carolina:

December 23, 2011; photo voter i.d. (DOJ-2011-2495).

Sub-jurisdictions:

Richland-Lexington School District; June 25, 2004, majority-vote requirement and numbered posts (DOJ-2002-3766).

Fairfield County: August 16, 2010 School District number of officials/method of election (DOJ-2010-0970).

South Dakota: None.

Sub-jurisdiction:

Charles Mix County; February 11, 2008, election to increase number of county commissioners (DOJ-2007-6012).

Texas:

August 21, 2008; candidate qualifications (DOJ-2007-5032).
March 12, 2012; voter photo i.d.

Sub-jurisdictions:

Gonzales County; March 24, 2009, bilingual election procedures (DOJ-2008-3588).
Gonzales County; March 12, 2010, bilingual election procedures (DOJ-2009-3078).
Runnels County; June 28, 2010, bilingual election procedures (DOJ-2009-3672).
Galveston; October 3, 2011, redistricting criteria (portion later withdrawn) (DOJ-98-2149).
Nueces County; February 7, 2012, redistricting (DOJ-2011-3992).
Galveston County; March 5, 2012, redistricting and other items (DOJ-2011-4317 and 4374).
Beaumont School District; December 21, 2012 reduction of single member districts (DOJ 2012-4278).
Beaumont School District; April 8, 2013, terms of office and qualification procedures (DOJ-2013-0895).

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SHELBY COUNTY, ALABAMA *v.* HOLDER, ATTORNEY GENERAL, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12–96. Argued February 27, 2013—Decided June 25, 2013

The Voting Rights Act of 1965 was enacted to address entrenched racial discrimination in voting, "an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution." *South Carolina* v. *Katzenbach*, 383 U. S. 301, 309. Section 2 of the Act, which bans any "standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen . . . to vote on account of race or color," 42 U. S. C. §1973(a), applies nationwide, is permanent, and is not at issue in this case. Other sections apply only to some parts of the country. Section 4 of the Act provides the "coverage formula," defining the "covered jurisdictions" as States or political subdivisions that maintained tests or devices as prerequisites to voting, and had low voter registration or turnout, in the 1960s and early 1970s. §1973b(b). In those covered jurisdictions, §5 of the Act provides that no change in voting procedures can take effect until approved by specified federal authorities in Washington, D. C. §1973c(a). Such approval is known as "preclearance."

The coverage formula and preclearance requirement were initially set to expire after five years, but the Act has been reauthorized several times. In 2006, the Act was reauthorized for an additional 25 years, but the coverage formula was not changed. Coverage still turned on whether a jurisdiction had a voting test in the 1960s or 1970s, and had low voter registration or turnout at that time. Shortly after the 2006 reauthorization, a Texas utility district sought to bail out from the Act's coverage and, in the alternative, challenged the Act's constitutionality. This Court resolved the challenge on statutory grounds, but expressed serious doubts about the Act's con-

Syllabus

tinued constitutionality. See *Northwest Austin Municipal Util. Dist. No. One* v. *Holder*, 557 U. S. 193.

Petitioner Shelby County, in the covered jurisdiction of Alabama, sued the Attorney General in Federal District Court in Washington, D. C., seeking a declaratory judgment that sections 4(b) and 5 are facially unconstitutional, as well as a permanent injunction against their enforcement. The District Court upheld the Act, finding that the evidence before Congress in 2006 was sufficient to justify reauthorizing §5 and continuing §4(b)'s coverage formula. The D. C. Circuit affirmed. After surveying the evidence in the record, that court accepted Congress's conclusion that §2 litigation remained inadequate in the covered jurisdictions to protect the rights of minority voters, that §5 was therefore still necessary, and that the coverage formula continued to pass constitutional muster.

Held: Section 4 of the Voting Rights Act is unconstitutional; its formula can no longer be used as a basis for subjecting jurisdictions to preclearance. Pp. 9–25.

(a) In *Northwest Austin,* this Court noted that the Voting Rights Act "imposes current burdens and must be justified by current needs" and concluded that "a departure from the fundamental principle of equal sovereignty requires a showing that a statute's disparate geographic coverage is sufficiently related to the problem that it targets." 557 U. S., at 203. These basic principles guide review of the question presented here. Pp. 9–17.

(1) State legislation may not contravene federal law. States retain broad autonomy, however, in structuring their governments and pursuing legislative objectives. Indeed, the Tenth Amendment reserves to the States all powers not specifically granted to the Federal Government, including "the power to regulate elections." *Gregory* v. *Ashcroft*, 501 U. S. 452, 461–462. There is also a "fundamental principle of equal sovereignty" among the States, which is highly pertinent in assessing disparate treatment of States. *Northwest Austin*, *supra,* at 203.

The Voting Rights Act sharply departs from these basic principles. It requires States to beseech the Federal Government for permission to implement laws that they would otherwise have the right to enact and execute on their own. And despite the tradition of equal sovereignty, the Act applies to only nine States (and additional counties). That is why, in 1966, this Court described the Act as "stringent" and "potent," *Katzenbach,* 383 U. S., at 308, 315, 337. The Court nonetheless upheld the Act, concluding that such an "uncommon exercise of congressional power" could be justified by "exceptional conditions." *Id.,* at 334. Pp. 9–12.

(2) In 1966, these departures were justified by the "blight of ra-

cial discrimination in voting" that had "infected the electoral process in parts of our country for nearly a century," *Katzenbach*, 383 U. S., at 308. At the time, the coverage formula—the means of linking the exercise of the unprecedented authority with the problem that warranted it—made sense. The Act was limited to areas where Congress found "evidence of actual voting discrimination," and the covered jurisdictions shared two characteristics: "the use of tests and devices for voter registration, and a voting rate in the 1964 presidential election at least 12 points below the national average." *Id.,* at 330. The Court explained that "[t]ests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters." *Ibid.* The Court therefore concluded that "the coverage formula [was] rational in both practice and theory." *Ibid.* Pp. 12–13.

(3) Nearly 50 years later, things have changed dramatically. Largely because of the Voting Rights Act, "[v]oter turnout and registration rates" in covered jurisdictions "now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." *Northwest Austin*, *supra,* at 202. The tests and devices that blocked ballot access have been forbidden nationwide for over 40 years**.** Yet the Act has not eased §5's restrictions or narrowed the scope of §4's coverage formula along the way. Instead those extraordinary and unprecedented features have been reauthorized as if nothing has changed, and they have grown even stronger. Because §5 applies only to those jurisdictions singled out by §4, the Court turns to consider that provision. Pp. 13–17.

(b) Section 4's formula is unconstitutional in light of current conditions. Pp. 17–25.

(1) In 1966, the coverage formula was "rational in both practice and theory." *Katzenbach*, *supra,* at 330. It looked to cause (discriminatory tests) and effect (low voter registration and turnout), and tailored the remedy (preclearance) to those jurisdictions exhibiting both. By 2009, however, the "coverage formula raise[d] serious constitutional questions." *Northwest Austin*, *supra,* at 204. Coverage today is based on decades-old data and eradicated practices. The formula captures States by reference to literacy tests and low voter registration and turnout in the 1960s and early 1970s. But such tests have been banned for over 40 years. And voter registration and turnout numbers in covered States have risen dramatically. In 1965, the States could be divided into those with a recent history of voting tests and low voter registration and turnout and those without those char-

Syllabus

acteristics. Congress based its coverage formula on that distinction. Today the Nation is no longer divided along those lines, yet the Voting Rights Act continues to treat it as if it were. Pp. 17–18.

(2) The Government attempts to defend the formula on grounds that it is "reverse-engineered"—Congress identified the jurisdictions to be covered and *then* came up with criteria to describe them. *Katzenbach* did not sanction such an approach, reasoning instead that the coverage formula was rational because the "formula . . . was relevant to the problem." 383 U. S., at 329, 330. The Government has a fallback argument—because the formula was relevant in 1965, its continued use is permissible so long as any discrimination remains in the States identified in 1965. But this does not look to "current political conditions," *Northwest Austin, supra,* at 203, instead relying on a comparison between the States in 1965. But history did not end in 1965. In assessing the "current need[ ]" for a preclearance system treating States differently from one another today, history since 1965 cannot be ignored. The Fifteenth Amendment is not designed to punish for the past; its purpose is to ensure a better future. To serve that purpose, Congress—if it is to divide the States—must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions. Pp. 18–21.

(3) Respondents also rely heavily on data from the record compiled by Congress before reauthorizing the Act. Regardless of how one looks at that record, no one can fairly say that it shows anything approaching the "pervasive," "flagrant," "widespread," and "rampant" discrimination that clearly distinguished the covered jurisdictions from the rest of the Nation in 1965. *Katzenbach*, *supra*, at 308, 315, 331. But a more fundamental problem remains: Congress did not use that record to fashion a coverage formula grounded in current conditions. It instead re-enacted a formula based on 40-year-old facts having no logical relation to the present day. Pp. 21–22.

679 F. 3d 848, reversed.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined. THOMAS, J., filed a concurring opinion. GINSBURG, J., filed a dissenting opinion, in which BREYER, SOTOMAYOR, and KAGAN, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 12–96

SHELBY COUNTY, ALABAMA, PETITIONER *v.* ERIC H. HOLDER, JR., ATTORNEY GENERAL, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June 25, 2013]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem. Section 5 of the Act required States to obtain federal permission before enacting any law related to voting—a drastic departure from basic principles of federalism. And §4 of the Act applied that requirement only to some States—an equally dramatic departure from the principle that all States enjoy equal sovereignty. This was strong medicine, but Congress determined it was needed to address entrenched racial discrimination in voting, "an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution." *South Carolina* v. *Katzenbach*, 383 U. S. 301, 309 (1966). As we explained in upholding the law, "exceptional conditions can justify legislative measures not otherwise appropriate." *Id.,* at 334. Reflecting the unprecedented nature of these measures, they were scheduled to expire after five years. See Voting Rights Act of 1965, §4(a), 79 Stat. 438.

Nearly 50 years later, they are still in effect; indeed, they have been made more stringent, and are now scheduled to last until 2031. There is no denying, however, that the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions. By 2009, "the racial gap in voter registration and turnout [was] lower in the States originally covered by §5 than it [was] nationwide." *Northwest Austin Municipal Util. Dist. No. One* v. *Holder*, 557 U. S. 193, 203–204 (2009). Since that time, Census Bureau data indicate that African-American voter turnout has come to exceed white voter turnout in five of the six States originally covered by §5, with a gap in the sixth State of less than one half of one percent. See Dept. of Commerce, Census Bureau, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States (Nov. 2012) (Table 4b).

At the same time, voting discrimination still exists; no one doubts that. The question is whether the Act's extraordinary measures, including its disparate treatment of the States, continue to satisfy constitutional requirements. As we put it a short time ago, "the Act imposes current burdens and must be justified by current needs." *Northwest Austin*, 557 U. S., at 203.

I

A

The Fifteenth Amendment was ratified in 1870, in the wake of the Civil War. It provides that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude," and it gives Congress the "power to enforce this article by appropriate legislation."

"The first century of congressional enforcement of the Amendment, however, can only be regarded as a failure." *Id.*, at 197. In the 1890s, Alabama, Georgia, Louisiana,

Mississippi, North Carolina, South Carolina, and Virginia began to enact literacy tests for voter registration and to employ other methods designed to prevent African-Americans from voting. *Katzenbach*, 383 U. S., at 310. Congress passed statutes outlawing some of these practices and facilitating litigation against them, but litigation remained slow and expensive, and the States came up with new ways to discriminate as soon as existing ones were struck down. Voter registration of African-Americans barely improved. *Id.,* at 313–314.

Inspired to action by the civil rights movement, Congress responded in 1965 with the Voting Rights Act. Section 2 was enacted to forbid, in all 50 States, any "standard, practice, or procedure . . . imposed or applied . . . to deny or abridge the right of any citizen of the United States to vote on account of race or color." 79 Stat. 437. The current version forbids any "standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 42 U. S. C. §1973(a). Both the Federal Government and individuals have sued to enforce §2, see, *e.g., Johnson* v. *De Grandy*, 512 U. S. 997 (1994), and injunctive relief is available in appropriate cases to block voting laws from going into effect, see 42 U. S. C. §1973j(d). Section 2 is permanent, applies nationwide, and is not at issue in this case.

Other sections targeted only some parts of the country. At the time of the Act's passage, these "covered" jurisdictions were those States or political subdivisions that had maintained a test or device as a prerequisite to voting as of November 1, 1964, and had less than 50 percent voter registration or turnout in the 1964 Presidential election. §4(b), 79 Stat. 438. Such tests or devices included literacy and knowledge tests, good moral character requirements, the need for vouchers from registered voters, and the like. §4(c), *id*., at 438–439. A covered jurisdiction could "bail

out" of coverage if it had not used a test or device in the preceding five years "for the purpose or with the effect of denying or abridging the right to vote on account of race or color." §4(a), *id.*, at 438. In 1965, the covered States included Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia. The additional covered subdivisions included 39 counties in North Carolina and one in Arizona. See 28 CFR pt. 51, App. (2012).

In those jurisdictions, §4 of the Act banned all such tests or devices. §4(a), 79 Stat. 438. Section 5 provided that no change in voting procedures could take effect until it was approved by federal authorities in Washington, D. C.—either the Attorney General or a court of three judges. *Id.,* at 439. A jurisdiction could obtain such "preclearance" only by proving that the change had neither "the purpose [nor] the effect of denying or abridging the right to vote on account of race or color." *Ibid*.

Sections 4 and 5 were intended to be temporary; they were set to expire after five years. See §4(a), *id.,* at 438; *Northwest Austin*, *supra,* at 199. In *South Carolina* v. *Katzenbach*, we upheld the 1965 Act against constitutional challenge, explaining that it was justified to address "voting discrimination where it persists on a pervasive scale." 383 U. S., at 308.

In 1970, Congress reauthorized the Act for another five years, and extended the coverage formula in §4(b) to jurisdictions that had a voting test and less than 50 percent voter registration or turnout as of 1968. Voting Rights Act Amendments of 1970, §§3–4, 84 Stat. 315. That swept in several counties in California, New Hampshire, and New York. See 28 CFR pt. 51, App. Congress also extended the ban in §4(a) on tests and devices nationwide. §6, 84 Stat. 315.

In 1975, Congress reauthorized the Act for seven more years, and extended its coverage to jurisdictions that had a voting test and less than 50 percent voter registration or

turnout as of 1972. Voting Rights Act Amendments of 1975, §§101, 202, 89 Stat. 400, 401. Congress also amended the definition of "test or device" to include the practice of providing English-only voting materials in places where over five percent of voting-age citizens spoke a single language other than English. §203, *id.*, at 401–402. As a result of these amendments, the States of Alaska, Arizona, and Texas, as well as several counties in California, Florida, Michigan, New York, North Carolina, and South Dakota, became covered jurisdictions. See 28 CFR pt. 51, App. Congress correspondingly amended sections 2 and 5 to forbid voting discrimination on the basis of membership in a language minority group, in addition to discrimination on the basis of race or color. §§203, 206, 89 Stat. 401, 402. Finally, Congress made the nationwide ban on tests and devices permanent. §102, *id.*, at 400.

In 1982, Congress reauthorized the Act for 25 years, but did not alter its coverage formula. See Voting Rights Act Amendments, 96 Stat. 131. Congress did, however, amend the bailout provisions, allowing political subdivisions of covered jurisdictions to bail out. Among other prerequisites for bailout, jurisdictions and their subdivisions must not have used a forbidden test or device, failed to receive preclearance, or lost a §2 suit, in the ten years prior to seeking bailout. §2, *id.,* at 131–133.

We upheld each of these reauthorizations against constitutional challenge. See *Georgia* v. *United States*, 411 U. S. 526 (1973); *City of Rome* v. *United States*, 446 U. S. 156 (1980); *Lopez* v. *Monterey County*, 525 U. S. 266 (1999).

In 2006, Congress again reauthorized the Voting Rights Act for 25 years, again without change to its coverage formula. Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act, 120 Stat. 577. Congress also amended §5 to prohibit more conduct than before. §5, *id.,* at 580–

581; see *Reno* v. *Bossier Parish School Bd.*, 528 U. S. 320, 341 (2000) (*Bossier II*); *Georgia* v. *Ashcroft*, 539 U. S. 461, 479 (2003). Section 5 now forbids voting changes with "any discriminatory purpose" as well as voting changes that diminish the ability of citizens, on account of race, color, or language minority status, "to elect their preferred candidates of choice." 42 U. S. C. §§1973c(b)–(d).

Shortly after this reauthorization, a Texas utility district brought suit, seeking to bail out from the Act's coverage and, in the alternative, challenging the Act's constitutionality. See *Northwest Austin*, 557 U. S., at 200–201. A three-judge District Court explained that only a State or political subdivision was eligible to seek bailout under the statute, and concluded that the utility district was not a political subdivision, a term that encompassed only "counties, parishes, and voter-registering subunits." *Northwest Austin Municipal Util. Dist. No. One* v. *Mukasey*, 573 F. Supp. 2d 221, 232 (DC 2008). The District Court also rejected the constitutional challenge. *Id.,* at 283.

We reversed. We explained that "'normally the Court will not decide a constitutional question if there is some other ground upon which to dispose of the case.'" *Northwest Austin*, *supra,* at 205 (quoting *Escambia County* v. *McMillan*, 466 U. S. 48, 51 (1984) (*per curiam*)). Concluding that "underlying constitutional concerns," among other things, "compel[led] a broader reading of the bailout provision," we construed the statute to allow the utility district to seek bailout. *Northwest Austin*, 557 U. S., at 207. In doing so we expressed serious doubts about the Act's continued constitutionality.

We explained that §5 "imposes substantial federalism costs" and "differentiates between the States, despite our historic tradition that all the States enjoy equal sovereignty." *Id.*, at 202, 203 (internal quotation marks omitted). We also noted that "[t]hings have changed in the South. Voter turnout and registration rates now approach parity.

Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." *Id.,* at 202. Finally, we questioned whether the problems that §5 meant to address were still "concentrated in the jurisdictions singled out for preclearance." *Id.,* at 203.

Eight Members of the Court subscribed to these views, and the remaining Member would have held the Act unconstitutional. Ultimately, however, the Court's construction of the bailout provision left the constitutional issues for another day.

B

Shelby County is located in Alabama, a covered jurisdiction. It has not sought bailout, as the Attorney General has recently objected to voting changes proposed from within the county. See App. 87a–92a. Instead, in 2010, the county sued the Attorney General in Federal District Court in Washington, D. C., seeking a declaratory judgment that sections 4(b) and 5 of the Voting Rights Act are facially unconstitutional, as well as a permanent injunction against their enforcement. The District Court ruled against the county and upheld the Act. 811 F. Supp. 2d 424, 508 (2011). The court found that the evidence before Congress in 2006 was sufficient to justify reauthorizing §5 and continuing the §4(b) coverage formula.

The Court of Appeals for the D. C. Circuit affirmed. In assessing §5, the D. C. Circuit considered six primary categories of evidence: Attorney General objections to voting changes, Attorney General requests for more information regarding voting changes, successful §2 suits in covered jurisdictions, the dispatching of federal observers to monitor elections in covered jurisdictions, §5 preclearance suits involving covered jurisdictions, and the deterrent effect of §5. See 679 F. 3d 848, 862–863 (2012). After extensive analysis of the record, the court accepted Con-

gress's conclusion that §2 litigation remained inadequate in the covered jurisdictions to protect the rights of minority voters, and that §5 was therefore still necessary. *Id.,* at 873.

Turning to §4, the D. C. Circuit noted that the evidence for singling out the covered jurisdictions was "less robust" and that the issue presented "a close question." *Id.*, at 879. But the court looked to data comparing the number of successful §2 suits in the different parts of the country. Coupling that evidence with the deterrent effect of §5, the court concluded that the statute continued "to single out the jurisdictions in which discrimination is concentrated," and thus held that the coverage formula passed constitutional muster. *Id.,* at 883.

Judge Williams dissented. He found "no positive correlation between inclusion in §4(b)'s coverage formula and low black registration or turnout." *Id.,* at 891. Rather, to the extent there was any correlation, it actually went the other way: "condemnation under §4(b) is a marker of *higher* black registration and turnout." *Ibid.* (emphasis added). Judge Williams also found that "[c]overed jurisdictions have *far more* black officeholders as a proportion of the black population than do uncovered ones." *Id.*, at 892. As to the evidence of successful §2 suits, Judge Williams disaggregated the reported cases by State, and concluded that "[t]he five worst uncovered jurisdictions . . . have worse records than eight of the covered jurisdictions." *Id.,* at 897. He also noted that two covered jurisdictions—Arizona and Alaska—had not had any successful reported §2 suit brought against them during the entire 24 years covered by the data. *Ibid.* Judge Williams would have held the coverage formula of §4(b) "irrational" and unconstitutional. *Id.,* at 885.

We granted certiorari. 568 U. S. ___ (2012).

II

In *Northwest Austin*, we stated that "the Act imposes current burdens and must be justified by current needs." 557 U. S., at 203. And we concluded that "a departure from the fundamental principle of equal sovereignty requires a showing that a statute's disparate geographic coverage is sufficiently related to the problem that it targets." *Ibid.* These basic principles guide our review of the question before us.[1]

A

The Constitution and laws of the United States are "the supreme Law of the Land." U. S. Const., Art. VI, cl. 2. State legislation may not contravene federal law. The Federal Government does not, however, have a general right to review and veto state enactments before they go into effect. A proposal to grant such authority to "negative" state laws was considered at the Constitutional Convention, but rejected in favor of allowing state laws to take effect, subject to later challenge under the Supremacy Clause. See 1 Records of the Federal Convention of 1787, pp. 21, 164–168 (M. Farrand ed. 1911); 2 *id.,* at 27–29, 390–392.

Outside the strictures of the Supremacy Clause, States retain broad autonomy in structuring their governments and pursuing legislative objectives. Indeed, the Constitution provides that all powers not specifically granted to the Federal Government are reserved to the States or citizens. Amdt. 10. This "allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States." *Bond* v. *United States*, 564 U. S. ___, ___

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[1] Both the Fourteenth and Fifteenth Amendments were at issue in *Northwest Austin*, see Juris. Statement i, and Brief for Federal Appellee 29–30, in *Northwest Austin Municipal Util. Dist. No. One* v. *Holder*, O. T. 2008, No. 08–322, and accordingly *Northwest Austin* guides our review under both Amendments in this case.

(2011) (slip op., at 9). But the federal balance "is not just an end in itself: Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power." *Ibid.* (internal quotation marks omitted).

More specifically, "'the Framers of the Constitution intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections.'" *Gregory* v. *Ashcroft*, 501 U. S. 452, 461–462 (1991) (quoting *Sugarman* v. *Dougall*, 413 U. S. 634, 647 (1973); some internal quotation marks omitted). Of course, the Federal Government retains significant control over federal elections. For instance, the Constitution authorizes Congress to establish the time and manner for electing Senators and Representatives. Art. I, §4, cl. 1; see also *Arizona* v. *Inter Tribal Council of Ariz., Inc.*, *ante*, at 4–6. But States have "broad powers to determine the conditions under which the right of suffrage may be exercised." *Carrington* v. *Rash*, 380 U. S. 89, 91 (1965) (internal quotation marks omitted); see also *Arizona*, *ante*, at 13–15. And "[e]ach State has the power to prescribe the qualifications of its officers and the manner in which they shall be chosen." *Boyd* v. *Nebraska ex rel. Thayer*, 143 U. S. 135, 161 (1892). Drawing lines for congressional districts is likewise "primarily the duty and responsibility of the State." *Perry* v. *Perez*, 565 U. S. ___, ___ (2012) (*per curiam*) (slip op., at 3) (internal quotation marks omitted).

Not only do States retain sovereignty under the Constitution, there is also a "fundamental principle of *equal* sovereignty" among the States. *Northwest Austin*, *supra*, at 203 (citing *United States* v. *Louisiana*, 363 U. S. 1, 16 (1960); *Lessee of Pollard* v. *Hagan*, 3 How. 212, 223 (1845); and *Texas* v. *White*, 7 Wall. 700, 725–726 (1869); emphasis added). Over a hundred years ago, this Court explained that our Nation "was and is a union of States, equal in power, dignity and authority." *Coyle* v. *Smith*, 221 U. S. 559, 567 (1911). Indeed, "the constitutional equality of the

States is essential to the harmonious operation of the scheme upon which the Republic was organized." *Id.,* at 580. *Coyle* concerned the admission of new States, and *Katzenbach* rejected the notion that the principle operated as a *bar* on differential treatment outside that context. 383 U. S., at 328–329. At the same time, as we made clear in *Northwest Austin*, the fundamental principle of equal sovereignty remains highly pertinent in assessing subsequent disparate treatment of States. 557 U. S., at 203.

The Voting Rights Act sharply departs from these basic principles. It suspends "*all* changes to state election law—however innocuous—until they have been precleared by federal authorities in Washington, D. C." *Id.*, at 202. States must beseech the Federal Government for permission to implement laws that they would otherwise have the right to enact and execute on their own, subject of course to any injunction in a §2 action. The Attorney General has 60 days to object to a preclearance request, longer if he requests more information. See 28 CFR §§51.9, 51.37. If a State seeks preclearance from a three-judge court, the process can take years.

And despite the tradition of equal sovereignty, the Act applies to only nine States (and several additional counties). While one State waits months or years and expends funds to implement a validly enacted law, its neighbor can typically put the same law into effect immediately, through the normal legislative process. Even if a noncovered jurisdiction is sued, there are important differences between those proceedings and preclearance proceedings; the preclearance proceeding "not only switches the burden of proof to the supplicant jurisdiction, but also applies substantive standards quite different from those governing the rest of the nation." 679 F. 3d, at 884 (Williams, J., dissenting) (case below).

All this explains why, when we first upheld the Act in 1966, we described it as "stringent" and "potent." *Katzen-*

bach, 383 U. S., at 308, 315, 337. We recognized that it "may have been an uncommon exercise of congressional power," but concluded that "legislative measures not otherwise appropriate" could be justified by "exceptional conditions." *Id.,* at 334. We have since noted that the Act "authorizes federal intrusion into sensitive areas of state and local policymaking," *Lopez*, 525 U. S., at 282, and represents an "extraordinary departure from the traditional course of relations between the States and the Federal Government," *Presley* v. *Etowah County Comm'n*, 502 U. S. 491, 500–501 (1992). As we reiterated in *Northwest Austin*, the Act constitutes "extraordinary legislation otherwise unfamiliar to our federal system." 557 U. S., at 211.

B

In 1966, we found these departures from the basic features of our system of government justified. The "blight of racial discrimination in voting" had "infected the electoral process in parts of our country for nearly a century." *Katzenbach*, 383 U. S., at 308. Several States had enacted a variety of requirements and tests "specifically designed to prevent" African-Americans from voting. *Id.,* at 310. Case-by-case litigation had proved inadequate to prevent such racial discrimination in voting, in part because States "merely switched to discriminatory devices not covered by the federal decrees," "enacted difficult new tests," or simply "defied and evaded court orders." *Id.,* at 314. Shortly before enactment of the Voting Rights Act, only 19.4 percent of African-Americans of voting age were registered to vote in Alabama, only 31.8 percent in Louisiana, and only 6.4 percent in Mississippi. *Id.,* at 313. Those figures were roughly 50 percentage points or more below the figures for whites. *Ibid.*

In short, we concluded that "[u]nder the compulsion of these unique circumstances, Congress responded in a

permissibly decisive manner." *Id.,* at 334, 335. We also noted then and have emphasized since that this extraordinary legislation was intended to be temporary, set to expire after five years. *Id.,* at 333; *Northwest Austin*, *supra*, at 199.

At the time, the coverage formula—the means of linking the exercise of the unprecedented authority with the problem that warranted it—made sense. We found that "Congress chose to limit its attention to the geographic areas where immediate action seemed necessary." *Katzenbach*, 383 U. S., at 328. The areas where Congress found "evidence of actual voting discrimination" shared two characteristics: "the use of tests and devices for voter registration, and a voting rate in the 1964 presidential election at least 12 points below the national average." *Id.,* at 330. We explained that "[t]ests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters." *Ibid.* We therefore concluded that "the coverage formula [was] rational in both practice and theory." *Ibid.* It accurately reflected those jurisdictions uniquely characterized by voting discrimination "on a pervasive scale," linking coverage to the devices used to effectuate discrimination and to the resulting disenfranchisement. *Id.,* at 308. The formula ensured that the "stringent remedies [were] aimed at areas where voting discrimination ha[d] been most flagrant." *Id.,* at 315.

C

Nearly 50 years later, things have changed dramatically. Shelby County contends that the preclearance requirement, even without regard to its disparate coverage, is now unconstitutional. Its arguments have a good deal of force. In the covered jurisdictions, "[v]oter turnout and

registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." *Northwest Austin*, 557 U. S., at 202. The tests and devices that blocked access to the ballot have been forbidden nationwide for over 40 years. See §6, 84 Stat. 315; §102, 89 Stat. 400.

Those conclusions are not ours alone. Congress said the same when it reauthorized the Act in 2006, writing that "[s]ignificant progress has been made in eliminating first generation barriers experienced by minority voters, including increased numbers of registered minority voters, minority voter turnout, and minority representation in Congress, State legislatures, and local elected offices." §2(b)(1), 120 Stat. 577. The House Report elaborated that "the number of African-Americans who are registered and who turn out to cast ballots has increased significantly over the last 40 years, particularly since 1982," and noted that "[i]n some circumstances, minorities register to vote and cast ballots at levels that surpass those of white voters." H. R. Rep. No. 109–478, p. 12 (2006). That Report also explained that there have been "significant increases in the number of African-Americans serving in elected offices"; more specifically, there has been approximately a 1,000 percent increase since 1965 in the number of African-American elected officials in the six States originally covered by the Voting Rights Act. *Id.,* at 18.

The following chart, compiled from the Senate and House Reports, compares voter registration numbers from 1965 to those from 2004 in the six originally covered States. These are the numbers that were before Congress when it reauthorized the Act in 2006:

	1965			2004		
	White	Black	Gap	White	Black	Gap
Alabama	69.2	19.3	49.9	73.8	72.9	0.9
Georgia	62.[6]	27.4	35.2	63.5	64.2	-0.7
Louisiana	80.5	31.6	48.9	75.1	71.1	4.0
Mississippi	69.9	6.7	63.2	72.3	76.1	-3.8
South Carolina	75.7	37.3	38.4	74.4	71.1	3.3
Virginia	61.1	38.3	22.8	68.2	57.4	10.8

See S. Rep. No. 109–295, p. 11 (2006); H. R. Rep. No. 109–478, at 12. The 2004 figures come from the Census Bureau. Census Bureau data from the most recent election indicate that African-American voter turnout exceeded white voter turnout in five of the six States originally covered by §5, with a gap in the sixth State of less than one half of one percent. See Dept. of Commerce, Census Bureau, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States (Table 4b). The preclearance statistics are also illuminating. In the first decade after enactment of §5, the Attorney General objected to 14.2 percent of proposed voting changes. H. R Rep. No. 109–478, at 22. In the last decade before reenactment, the Attorney General objected to a mere 0.16 percent. S. Rep. No. 109–295, at 13.

There is no doubt that these improvements are in large part *because of* the Voting Rights Act. The Act has proved immensely successful at redressing racial discrimination and integrating the voting process. See §2(b)(1), 120 Stat. 577. During the "Freedom Summer" of 1964, in Philadelphia, Mississippi, three men were murdered while working in the area to register African-American voters. See *United States* v. *Price*, 383 U. S. 787, 790 (1966). On "Bloody Sunday" in 1965, in Selma, Alabama, police beat

and used tear gas against hundreds marching in support of African-American enfranchisement. See *Northwest Austin*, *supra*, at 220, n. 3 (THOMAS, J., concurring in judgment in part and dissenting in part). Today both of those towns are governed by African-American mayors. Problems remain in these States and others, but there is no denying that, due to the Voting Rights Act, our Nation has made great strides.

Yet the Act has not eased the restrictions in §5 or narrowed the scope of the coverage formula in §4(b) along the way. Those extraordinary and unprecedented features were reauthorized—as if nothing had changed. In fact, the Act's unusual remedies have grown even stronger. When Congress reauthorized the Act in 2006, it did so for another 25 years on top of the previous 40—a far cry from the initial five-year period. See 42 U. S. C. §1973b(a)(8). Congress also expanded the prohibitions in §5. We had previously interpreted §5 to prohibit only those redistricting plans that would have the purpose or effect of worsening the position of minority groups. See *Bossier II*, 528 U. S., at 324, 335–336. In 2006, Congress amended §5 to prohibit laws that could have favored such groups but did not do so because of a discriminatory purpose, see 42 U. S. C. §1973c(c), even though we had stated that such broadening of §5 coverage would "exacerbate the substantial federalism costs that the preclearance procedure already exacts, perhaps to the extent of raising concerns about §5's constitutionality," *Bossier II*, *supra,* at 336 (citation and internal quotation marks omitted). In addition, Congress expanded §5 to prohibit any voting law "that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States," on account of race, color, or language minority status, "to elect their preferred candidates of choice." §1973c(b). In light of those two amendments, the bar that covered jurisdictions must clear has been raised even as the conditions

justifying that requirement have dramatically improved.

We have also previously highlighted the concern that "the preclearance requirements in one State [might] be unconstitutional in another." *Northwest Austin*, 557 U. S., at 203; see *Georgia* v. *Ashcroft*, 539 U. S., at 491 (KENNEDY, J., concurring) ("considerations of race that would doom a redistricting plan under the Fourteenth Amendment or §2 [of the Voting Rights Act] seem to be what save it under §5"). Nothing has happened since to alleviate this troubling concern about the current application of §5.

Respondents do not deny that there have been improvements on the ground, but argue that much of this can be attributed to the deterrent effect of §5, which dissuades covered jurisdictions from engaging in discrimination that they would resume should §5 be struck down. Under this theory, however, §5 would be effectively immune from scrutiny; no matter how "clean" the record of covered jurisdictions, the argument could always be made that it was deterrence that accounted for the good behavior.

The provisions of §5 apply only to those jurisdictions singled out by §4. We now consider whether that coverage formula is constitutional in light of current conditions.

III

A

When upholding the constitutionality of the coverage formula in 1966, we concluded that it was "rational in both practice and theory." *Katzenbach*, 383 U. S., at 330. The formula looked to cause (discriminatory tests) and effect (low voter registration and turnout), and tailored the remedy (preclearance) to those jurisdictions exhibiting both.

By 2009, however, we concluded that the "coverage formula raise[d] serious constitutional questions." *North-*

west Austin, 557 U. S., at 204. As we explained, a statute's "current burdens" must be justified by "current needs," and any "disparate geographic coverage" must be "sufficiently related to the problem that it targets." *Id.,* at 203. The coverage formula met that test in 1965, but no longer does so.

Coverage today is based on decades-old data and eradicated practices. The formula captures States by reference to literacy tests and low voter registration and turnout in the 1960s and early 1970s. But such tests have been banned nationwide for over 40 years. §6, 84 Stat. 315; §102, 89 Stat. 400. And voter registration and turnout numbers in the covered States have risen dramatically in the years since. H. R. Rep. No. 109–478, at 12. Racial disparity in those numbers was compelling evidence justifying the preclearance remedy and the coverage formula. See, *e.g., Katzenbach*, *supra*, at 313, 329–330. There is no longer such a disparity.

In 1965, the States could be divided into two groups: those with a recent history of voting tests and low voter registration and turnout, and those without those characteristics. Congress based its coverage formula on that distinction. Today the Nation is no longer divided along those lines, yet the Voting Rights Act continues to treat it as if it were.

B

The Government's defense of the formula is limited. First, the Government contends that the formula is "reverse-engineered": Congress identified the jurisdictions to be covered and *then* came up with criteria to describe them. Brief for Federal Respondent 48–49. Under that reasoning, there need not be any logical relationship between the criteria in the formula and the reason for coverage; all that is necessary is that the formula happen to capture the jurisdictions Congress wanted to single out.

The Government suggests that *Katzenbach* sanctioned such an approach, but the analysis in *Katzenbach* was quite different. *Katzenbach* reasoned that the coverage formula was rational because the "formula . . . was relevant to the problem": "Tests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters." 383 U. S., at 329, 330.

Here, by contrast, the Government's reverse-engineering argument does not even attempt to demonstrate the continued relevance of the formula to the problem it targets. And in the context of a decision as significant as this one—subjecting a disfavored subset of States to "extraordinary legislation otherwise unfamiliar to our federal system," *Northwest Austin*, *supra,* at 211—that failure to establish even relevance is fatal.

The Government falls back to the argument that because the formula was relevant in 1965, its continued use is permissible so long as any discrimination remains in the States Congress identified back then—regardless of how that discrimination compares to discrimination in States unburdened by coverage. Brief for Federal Respondent 49–50. This argument does not look to "current political conditions," *Northwest Austin*, *supra,* at 203, but instead relies on a comparison between the States in 1965. That comparison reflected the different histories of the North and South. It was in the South that slavery was upheld by law until uprooted by the Civil War, that the reign of Jim Crow denied African-Americans the most basic freedoms, and that state and local governments worked tirelessly to disenfranchise citizens on the basis of race. The Court invoked that history—rightly so—in sustaining the disparate coverage of the Voting Rights Act in 1966. See *Katzenbach*, *supra*, at 308 ("The constitutional propriety of

the Voting Rights Act of 1965 must be judged with reference to the historical experience which it reflects.").

But history did not end in 1965. By the time the Act was reauthorized in 2006, there had been 40 more years of it. In assessing the "current need[]" for a preclearance system that treats States differently from one another today, that history cannot be ignored. During that time, largely because of the Voting Rights Act, voting tests were abolished, disparities in voter registration and turnout due to race were erased, and African-Americans attained political office in record numbers. And yet the coverage formula that Congress reauthorized in 2006 ignores these developments, keeping the focus on decades-old data relevant to decades-old problems, rather than current data reflecting current needs.

The Fifteenth Amendment commands that the right to vote shall not be denied or abridged on account of race or color, and it gives Congress the power to enforce that command. The Amendment is not designed to punish for the past; its purpose is to ensure a better future. See *Rice* v. *Cayetano*, 528 U. S. 495, 512 (2000) ("Consistent with the design of the Constitution, the [Fifteenth] Amendment is cast in fundamental terms, terms transcending the particular controversy which was the immediate impetus for its enactment."). To serve that purpose, Congress—if it is to divide the States—must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions. It cannot rely simply on the past. We made that clear in *Northwest Austin*, and we make it clear again today.

C

In defending the coverage formula, the Government, the intervenors, and the dissent also rely heavily on data from the record that they claim justify disparate coverage. Congress compiled thousands of pages of evidence before

reauthorizing the Voting Rights Act. The court below and the parties have debated what that record shows—they have gone back and forth about whether to compare covered to noncovered jurisdictions as blocks, how to disaggregate the data State by State, how to weigh §2 cases as evidence of ongoing discrimination, and whether to consider evidence not before Congress, among other issues. Compare, *e.g.,* 679 F. 3d, at 873–883 (case below), with *id.,* at 889–902 (Williams, J., dissenting). Regardless of how to look at the record, however, no one can fairly say that it shows anything approaching the "pervasive," "flagrant," "widespread," and "rampant" discrimination that faced Congress in 1965, and that clearly distinguished the covered jurisdictions from the rest of the Nation at that time. *Katzenbach*, *supra*, at 308, 315, 331; *Northwest Austin*, 557 U. S., at 201.

But a more fundamental problem remains: Congress did not use the record it compiled to shape a coverage formula grounded in current conditions. It instead reenacted a formula based on 40-year-old facts having no logical relation to the present day. The dissent relies on "second-generation barriers," which are not impediments to the casting of ballots, but rather electoral arrangements that affect the weight of minority votes. That does not cure the problem. Viewing the preclearance requirements as targeting such efforts simply highlights the irrationality of continued reliance on the §4 coverage formula, which is based on voting tests and access to the ballot, not vote dilution. We cannot pretend that we are reviewing an updated statute, or try our hand at updating the statute ourselves, based on the new record compiled by Congress. Contrary to the dissent's contention, see *post,* at 23, we are not ignoring the record; we are simply recognizing that it played no role in shaping the statutory formula before us today.

The dissent also turns to the record to argue that, in

light of voting discrimination in Shelby County, the county cannot complain about the provisions that subject it to preclearance. *Post,* at 23–30. But that is like saying that a driver pulled over pursuant to a policy of stopping all redheads cannot complain about that policy, if it turns out his license has expired. Shelby County's claim is that the coverage formula here is unconstitutional in all its applications, because of how it selects the jurisdictions subjected to preclearance. The county was selected based on that formula, and may challenge it in court.

D

The dissent proceeds from a flawed premise. It quotes the famous sentence from *McCulloch* v. *Maryland*, 4 Wheat. 316, 421 (1819), with the following emphasis: "Let the end be legitimate, let it be within the scope of the constitution, and *all means which are appropriate, which are plainly adapted to that end,* which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *Post,* at 9 (emphasis in dissent). But this case is about a part of the sentence that the dissent does not emphasize—the part that asks whether a legislative means is "consist[ent] with the letter and spirit of the constitution." The dissent states that "[i]t cannot tenably be maintained" that this is an issue with regard to the Voting Rights Act, *post,* at 9, but four years ago, in an opinion joined by two of today's dissenters, the Court expressly stated that "[t]he Act's preclearance requirement and its coverage formula raise serious constitutional questions." *Northwest Austin*, *supra,* at 204. The dissent does not explain how those "serious constitutional questions" became untenable in four short years.

The dissent treats the Act as if it were just like any other piece of legislation, but this Court has made clear from the beginning that the Voting Rights Act is far from ordinary. At the risk of repetition, *Katzenbach* indicated

that the Act was "uncommon" and "not otherwise appropriate," but was justified by "exceptional" and "unique" conditions. 383 U. S., at 334, 335. Multiple decisions since have reaffirmed the Act's "extraordinary" nature. See, *e.g., Northwest Austin*, *supra*, at 211. Yet the dissent goes so far as to suggest instead that the preclearance requirement and disparate treatment of the States should be upheld into the future "unless there [is] no or almost no evidence of unconstitutional action by States." *Post,* at 33.

In other ways as well, the dissent analyzes the question presented as if our decision in *Northwest Austin* never happened. For example, the dissent refuses to consider the principle of equal sovereignty, despite *Northwest Austin*'s emphasis on its significance. *Northwest Austin* also emphasized the "dramatic" progress since 1965, 557 U. S., at 201, but the dissent describes current levels of discrimination as "flagrant," "widespread," and "pervasive," *post,* at 7, 17 (internal quotation marks omitted). Despite the fact that *Northwest Austin* requires an Act's "disparate geographic coverage" to be "sufficiently related" to its targeted problems, 557 U. S., at 203, the dissent maintains that an Act's limited coverage actually eases Congress's burdens, and suggests that a fortuitous relationship should suffice. Although *Northwest Austin* stated definitively that "current burdens" must be justified by "current needs," *ibid.,* the dissent argues that the coverage formula can be justified by history, and that the required showing can be weaker on reenactment than when the law was first passed.

There is no valid reason to insulate the coverage formula from review merely because it was previously enacted 40 years ago. If Congress had started from scratch in 2006, it plainly could not have enacted the present coverage formula. It would have been irrational for Congress to distinguish between States in such a fundamental way based on 40-year-old data, when today's statistics tell an

entirely different story. And it would have been irrational to base coverage on the use of voting tests 40 years ago, when such tests have been illegal since that time. But that is exactly what Congress has done.

* * *

Striking down an Act of Congress "is the gravest and most delicate duty that this Court is called on to perform." *Blodgett* v. *Holden*, 275 U. S. 142, 148 (1927) (Holmes, J., concurring). We do not do so lightly. That is why, in 2009, we took care to avoid ruling on the constitutionality of the Voting Rights Act when asked to do so, and instead resolved the case then before us on statutory grounds. But in issuing that decision, we expressed our broader concerns about the constitutionality of the Act. Congress could have updated the coverage formula at that time, but did not do so. Its failure to act leaves us today with no choice but to declare §4(b) unconstitutional. The formula in that section can no longer be used as a basis for subjecting jurisdictions to preclearance.

Our decision in no way affects the permanent, nationwide ban on racial discrimination in voting found in §2. We issue no holding on §5 itself, only on the coverage formula. Congress may draft another formula based on current conditions. Such a formula is an initial prerequisite to a determination that exceptional conditions still exist justifying such an "extraordinary departure from the traditional course of relations between the States and the Federal Government." *Presley*, 502 U. S., at 500–501. Our country has changed, and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions.

The judgment of the Court of Appeals is reversed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 12–96

SHELBY COUNTY, ALABAMA, PETITIONER *v.* ERIC H. HOLDER, JR., ATTORNEY GENERAL, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June 25, 2013]

JUSTICE THOMAS, concurring.

I join the Court's opinion in full but write separately to explain that I would find §5 of the Voting Rights Act unconstitutional as well. The Court's opinion sets forth the reasons.

"The Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem." *Ante,* at 1. In the face of "unremitting and ingenious defiance" of citizens' constitutionally protected right to vote, §5 was necessary to give effect to the Fifteenth Amendment in particular regions of the country. *South Carolina* v. *Katzenbach*, 383 U. S. 301, 309 (1966). Though §5's preclearance requirement represented a "shar[p] depart[ure]" from "basic principles" of federalism and the equal sovereignty of the States, *ante,* at 9, 11, the Court upheld the measure against early constitutional challenges because it was necessary at the time to address "voting discrimination where it persist[ed] on a pervasive scale." *Katzenbach*, *supra*, at 308.

Today, our Nation has changed. "[T]he conditions that originally justified [§5] no longer characterize voting in the covered jurisdictions." *Ante,* at 2. As the Court explains: "'[V]oter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal de-

crees are rare. And minority candidates hold office at unprecedented levels.'" *Ante,* at 13–14 (quoting *Northwest Austin Municipal Util. Dist. No. One* v. *Holder*, 557 U. S. 193, 202 (2009)).

In spite of these improvements, however, Congress *increased* the already significant burdens of §5. Following its reenactment in 2006, the Voting Rights Act was amended to "prohibit more conduct than before." *Ante,* at 5. "Section 5 now forbids voting changes with 'any discriminatory purpose' as well as voting changes that diminish the ability of citizens, on account of race, color, or language minority status, 'to elect their preferred candidates of choice.'" *Ante,* at 6. While the pre-2006 version of the Act went well beyond protection guaranteed under the Constitution, see *Reno* v. *Bossier Parish School Bd.*, 520 U. S. 471, 480–482 (1997), it now goes even further.

It is, thus, quite fitting that the Court repeatedly points out that this legislation is "extraordinary" and "unprecedented" and recognizes the significant constitutional problems created by Congress' decision to raise "the bar that covered jurisdictions must clear," even as "the conditions justifying that requirement have dramatically improved." *Ante,* at 16–17. However one aggregates the data compiled by Congress, it cannot justify the considerable burdens created by §5. As the Court aptly notes: "[N]o one can fairly say that [the record] shows anything approaching the 'pervasive,' 'flagrant,' 'widespread,' and 'rampant' discrimination that faced Congress in 1965, and that clearly distinguished the covered jurisdictions from the rest of the Nation at that time." *Ante,* at 21. Indeed, circumstances in the covered jurisdictions can no longer be characterized as "exceptional" or "unique." "The extensive pattern of discrimination that led the Court to previously uphold §5 as enforcing the Fifteenth Amendment no longer exists." *Northwest Austin*, *supra*, at 226 (THOMAS, J., concurring in judgment in part and dissenting in part).

Section 5 is, thus, unconstitutional.

While the Court claims to "issue no holding on §5 itself," *ante,* at 24, its own opinion compellingly demonstrates that Congress has failed to justify "'current burdens'" with a record demonstrating "'current needs.'" See *ante,* at 9 (quoting *Northwest Austin*, *supra,* at 203). By leaving the inevitable conclusion unstated, the Court needlessly prolongs the demise of that provision. For the reasons stated in the Court's opinion, I would find §5 unconstitutional.

SUPREME COURT OF THE UNITED STATES

No. 12–96

SHELBY COUNTY, ALABAMA, PETITIONER *v.* ERIC H. HOLDER, JR., ATTORNEY GENERAL, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June 25, 2013]

JUSTICE GINSBURG, with whom JUSTICE BREYER, JUSTICE SOTOMAYOR, and JUSTICE KAGAN join, dissenting.

In the Court's view, the very success of §5 of the Voting Rights Act demands its dormancy. Congress was of another mind. Recognizing that large progress has been made, Congress determined, based on a voluminous record, that the scourge of discrimination was not yet extirpated. The question this case presents is who decides whether, as currently operative, §5 remains justifiable,[1] this Court, or a Congress charged with the obligation to enforce the post-Civil War Amendments "by appropriate legislation." With overwhelming support in both Houses, Congress concluded that, for two prime reasons, §5 should continue in force, unabated. First, continuance would facilitate completion of the impressive gains thus far made; and second, continuance would guard against backsliding. Those assessments were well within Congress' province to make and should elicit this Court's unstinting approbation.

I

"[V]oting discrimination still exists; no one doubts that."

[1]The Court purports to declare unconstitutional only the coverage formula set out in §4(b). See *ante*, at 24. But without that formula, §5 is immobilized.

Ante, at 2. But the Court today terminates the remedy that proved to be best suited to block that discrimination. The Voting Rights Act of 1965 (VRA) has worked to combat voting discrimination where other remedies had been tried and failed. Particularly effective is the VRA's requirement of federal preclearance for all changes to voting laws in the regions of the country with the most aggravated records of rank discrimination against minority voting rights.

A century after the Fourteenth and Fifteenth Amendments guaranteed citizens the right to vote free of discrimination on the basis of race, the "blight of racial discrimination in voting" continued to "infec[t] the electoral process in parts of our country." *South Carolina* v. *Katzenbach*, 383 U. S. 301, 308 (1966). Early attempts to cope with this vile infection resembled battling the Hydra. Whenever one form of voting discrimination was identified and prohibited, others sprang up in its place. This Court repeatedly encountered the remarkable "variety and persistence" of laws disenfranchising minority citizens. *Id.,* at 311. To take just one example, the Court, in 1927, held unconstitutional a Texas law barring black voters from participating in primary elections, *Nixon* v. *Herndon*, 273 U. S. 536, 541; in 1944, the Court struck down a "reenacted" and slightly altered version of the same law, *Smith* v. *Allwright*, 321 U. S. 649, 658; and in 1953, the Court once again confronted an attempt by Texas to "circumven[t]" the Fifteenth Amendment by adopting yet another variant of the all-white primary, *Terry* v. *Adams*, 345 U. S. 461, 469.

During this era, the Court recognized that discrimination against minority voters was a quintessentially political problem requiring a political solution. As Justice Holmes explained: If "the great mass of the white population intends to keep the blacks from voting," "relief from [that] great political wrong, if done, as alleged, by the

people of a State and the State itself, must be given by them or by the legislative and political department of the government of the United States." *Giles* v. *Harris*, 189 U. S. 475, 488 (1903).

Congress learned from experience that laws targeting particular electoral practices or enabling case-by-case litigation were inadequate to the task. In the Civil Rights Acts of 1957, 1960, and 1964, Congress authorized and then expanded the power of "the Attorney General to seek injunctions against public and private interference with the right to vote on racial grounds." *Katzenbach*, 383 U. S., at 313. But circumstances reduced the ameliorative potential of these legislative Acts:

> "Voting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 man-hours spent combing through registration records in preparation for trial. Litigation has been exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings. Even when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration. Alternatively, certain local officials have defied and evaded court orders or have simply closed their registration offices to freeze the voting rolls." *Id.,* at 314 (footnote omitted).

Patently, a new approach was needed.

Answering that need, the Voting Rights Act became one of the most consequential, efficacious, and amply justified exercises of federal legislative power in our Nation's history. Requiring federal preclearance of changes in voting laws in the covered jurisdictions—those States and localities where opposition to the Constitution's commands were

most virulent—the VRA provided a fit solution for minority voters as well as for States. Under the preclearance regime established by §5 of the VRA, covered jurisdictions must submit proposed changes in voting laws or procedures to the Department of Justice (DOJ), which has 60 days to respond to the changes. 79 Stat. 439, codified at 42 U. S. C. §1973c(a). A change will be approved unless DOJ finds it has "the purpose [or] . . . the effect of denying or abridging the right to vote on account of race or color." *Ibid.* In the alternative, the covered jurisdiction may seek approval by a three-judge District Court in the District of Columbia.

After a century's failure to fulfill the promise of the Fourteenth and Fifteenth Amendments, passage of the VRA finally led to signal improvement on this front. "The Justice Department estimated that in the five years after [the VRA's] passage, almost as many blacks registered [to vote] in Alabama, Mississippi, Georgia, Louisiana, North Carolina, and South Carolina as in the entire century before 1965." Davidson, The Voting Rights Act: A Brief History, in Controversies in Minority Voting 7, 21 (B. Grofman & C. Davidson eds. 1992). And in assessing the overall effects of the VRA in 2006, Congress found that "[s]ignificant progress has been made in eliminating first generation barriers experienced by minority voters, including increased numbers of registered minority voters, minority voter turnout, and minority representation in Congress, State legislatures, and local elected offices. This progress is the direct result of the Voting Rights Act of 1965." Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 (hereinafter 2006 Reauthorization), §2(b)(1), 120 Stat. 577. On that matter of cause and effects there can be no genuine doubt.

Although the VRA wrought dramatic changes in the realization of minority voting rights, the Act, to date,

surely has not eliminated all vestiges of discrimination against the exercise of the franchise by minority citizens. Jurisdictions covered by the preclearance requirement continued to submit, in large numbers, proposed changes to voting laws that the Attorney General declined to approve, auguring that barriers to minority voting would quickly resurface were the preclearance remedy eliminated. *City of Rome* v. *United States*, 446 U. S. 156, 181 (1980). Congress also found that as "registration and voting of minority citizens increas[ed], other measures may be resorted to which would dilute increasing minority voting strength." *Ibid.* (quoting H. R. Rep. No. 94–196, p. 10 (1975)). See also *Shaw* v. *Reno*, 509 U. S. 630, 640 (1993) ("[I]t soon became apparent that guaranteeing equal access to the polls would not suffice to root out other racially discriminatory voting practices" such as voting dilution). Efforts to reduce the impact of minority votes, in contrast to direct attempts to block access to the ballot, are aptly described as "second-generation barriers" to minority voting.

Second-generation barriers come in various forms. One of the blockages is racial gerrymandering, the redrawing of legislative districts in an "effort to segregate the races for purposes of voting." *Id.,* at 642. Another is adoption of a system of at-large voting in lieu of district-by-district voting in a city with a sizable black minority. By switching to at-large voting, the overall majority could control the election of each city council member, effectively eliminating the potency of the minority's votes. Grofman & Davidson, The Effect of Municipal Election Structure on Black Representation in Eight Southern States, in Quiet Revolution in the South 301, 319 (C. Davidson & B. Grofman eds. 1994) (hereinafter Quiet Revolution). A similar effect could be achieved if the city engaged in discriminatory annexation by incorporating majority-white areas into city limits, thereby decreasing the effect

of VRA-occasioned increases in black voting. Whatever the device employed, this Court has long recognized that vote dilution, when adopted with a discriminatory purpose, cuts down the right to vote as certainly as denial of access to the ballot. *Shaw*, 509 U. S., at 640–641; *Allen* v. *State Bd. of Elections*, 393 U. S. 544, 569 (1969); *Reynolds* v. *Sims*, 377 U. S. 533, 555 (1964). See also H. R. Rep. No. 109–478, p. 6 (2006) (although "[d]iscrimination today is more subtle than the visible methods used in 1965," "the effect and results are the same, namely a diminishing of the minority community's ability to fully participate in the electoral process and to elect their preferred candidates").

In response to evidence of these substituted barriers, Congress reauthorized the VRA for five years in 1970, for seven years in 1975, and for 25 years in 1982. *Ante*, at 4–5. Each time, this Court upheld the reauthorization as a valid exercise of congressional power. *Ante*, at 5. As the 1982 reauthorization approached its 2007 expiration date, Congress again considered whether the VRA's preclearance mechanism remained an appropriate response to the problem of voting discrimination in covered jurisdictions.

Congress did not take this task lightly. Quite the opposite. The 109th Congress that took responsibility for the renewal started early and conscientiously. In October 2005, the House began extensive hearings, which continued into November and resumed in March 2006. S. Rep. No. 109–295, p. 2 (2006). In April 2006, the Senate followed suit, with hearings of its own. *Ibid.* In May 2006, the bills that became the VRA's reauthorization were introduced in both Houses. *Ibid.* The House held further hearings of considerable length, as did the Senate, which continued to hold hearings into June and July. H. R. Rep. 109–478, at 5; S. Rep. 109–295, at 3–4. In mid-July, the House considered and rejected four amendments, then passed the reauthorization by a vote of 390 yeas to 33 nays. 152 Cong. Rec. H5207 (July 13, 2006); Persily, The

Promise and Pitfalls of the New Voting Rights Act, 117 Yale L. J. 174, 182–183 (2007) (hereinafter Persily). The bill was read and debated in the Senate, where it passed by a vote of 98 to 0. 152 Cong. Rec. S8012 (July 20, 2006). President Bush signed it a week later, on July 27, 2006, recognizing the need for "further work . . . in the fight against injustice," and calling the reauthorization "an example of our continued commitment to a united America where every person is valued and treated with dignity and respect." 152 Cong. Rec. S8781 (Aug. 3, 2006).

In the long course of the legislative process, Congress "amassed a sizable record." *Northwest Austin Municipal Util. Dist. No. One* v. *Holder*, 557 U. S. 193, 205 (2009). See also 679 F. 3d 848, 865–873 (CADC 2012) (describing the "extensive record" supporting Congress' determination that "serious and widespread intentional discrimination persisted in covered jurisdictions"). The House and Senate Judiciary Committees held 21 hearings, heard from scores of witnesses, received a number of investigative reports and other written documentation of continuing discrimination in covered jurisdictions. In all, the legislative record Congress compiled filled more than 15,000 pages. H. R. Rep. 109–478, at 5, 11–12; S. Rep. 109–295, at 2–4, 15. The compilation presents countless "examples of flagrant racial discrimination" since the last reauthorization; Congress also brought to light systematic evidence that "intentional racial discrimination in voting remains so serious and widespread in covered jurisdictions that section 5 preclearance is still needed." 679 F. 3d, at 866.

After considering the full legislative record, Congress made the following findings: The VRA has directly caused significant progress in eliminating first-generation barriers to ballot access, leading to a marked increase in minority voter registration and turnout and the number of minority elected officials. 2006 Reauthorization §2(b)(1). But despite this progress, "second generation barriers

constructed to prevent minority voters from fully participating in the electoral process" continued to exist, as well as racially polarized voting in the covered jurisdictions, which increased the political vulnerability of racial and language minorities in those jurisdictions. §§2(b)(2)–(3), 120 Stat. 577. Extensive "[e]vidence of continued discrimination," Congress concluded, "clearly show[ed] the continued need for Federal oversight" in covered jurisdictions. §§2(b)(4)–(5), *id.,* at 577–578. The overall record demonstrated to the federal lawmakers that, "without the continuation of the Voting Rights Act of 1965 protections, racial and language minority citizens will be deprived of the opportunity to exercise their right to vote, or will have their votes diluted, undermining the significant gains made by minorities in the last 40 years." §2(b)(9), *id.,* at 578.

Based on these findings, Congress reauthorized preclearance for another 25 years, while also undertaking to reconsider the extension after 15 years to ensure that the provision was still necessary and effective. 42 U. S. C. §1973b(a)(7), (8) (2006 ed., Supp. V). The question before the Court is whether Congress had the authority under the Constitution to act as it did.

II

In answering this question, the Court does not write on a clean slate. It is well established that Congress' judgment regarding exercise of its power to enforce the Fourteenth and Fifteenth Amendments warrants substantial deference. The VRA addresses the combination of race discrimination and the right to vote, which is "preservative of all rights." *Yick Wo* v. *Hopkins*, 118 U. S. 356, 370 (1886). When confronting the most constitutionally invidious form of discrimination, and the most fundamental right in our democratic system, Congress' power to act is at its height.

The basis for this deference is firmly rooted in both constitutional text and precedent. The Fifteenth Amendment, which targets precisely and only racial discrimination in voting rights, states that, in this domain, "Congress shall have power to enforce this article by appropriate legislation."[2] In choosing this language, the Amendment's framers invoked Chief Justice Marshall's formulation of the scope of Congress' powers under the Necessary and Proper Clause:

> "Let the end be legitimate, let it be within the scope of the constitution, and *all means which are appropriate, which are plainly adapted to that end*, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *McCulloch* v. *Maryland*, 4 Wheat. 316, 421 (1819) (emphasis added).

It cannot tenably be maintained that the VRA, an Act of Congress adopted to shield the right to vote from racial discrimination, is inconsistent with the letter or spirit of the Fifteenth Amendment, or any provision of the Constitution read in light of the Civil War Amendments. Nowhere in today's opinion, or in *Northwest Austin*,[3] is there

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[2] The Constitution uses the words "right to vote" in five separate places: the Fourteenth, Fifteenth, Nineteenth, Twenty-Fourth, and Twenty-Sixth Amendments. Each of these Amendments contains the same broad empowerment of Congress to enact "appropriate legislation" to enforce the protected right. The implication is unmistakable: Under our constitutional structure, Congress holds the lead rein in making the right to vote equally real for all U. S. citizens. These Amendments are in line with the special role assigned to Congress in protecting the integrity of the democratic process in federal elections. U. S. Const., Art. I, §4 ("[T]he Congress may at any time by Law make or alter" regulations concerning the "Times, Places and Manner of holding Elections for Senators and Representatives."); *Arizona* v. *Inter Tribal Council of Ariz., Inc.*, *ante*, at 5–6.

[3] Acknowledging the existence of "serious constitutional questions," see *ante*, at 22 (internal quotation marks omitted), does not suggest how those questions should be answered.

clear recognition of the transformative effect the Fifteenth Amendment aimed to achieve. Notably, "the Founders' first successful amendment told Congress that it could 'make no law' over a certain domain"; in contrast, the Civil War Amendments used "language [that] authorized transformative new federal statutes to uproot all vestiges of unfreedom and inequality" and provided "sweeping enforcement powers . . . to enact 'appropriate' legislation targeting state abuses." A. Amar, America's Constitution: A Biography 361, 363, 399 (2005). See also McConnell, Institutions and Interpretation: A Critique of *City of Boerne v. Flores*, 111 Harv. L. Rev. 153, 182 (1997) (quoting Civil War-era framer that "the remedy for the violation of the fourteenth and fifteenth amendments was expressly not left to the courts. The remedy was legislative.").

The stated purpose of the Civil War Amendments was to arm Congress with the power and authority to protect all persons within the Nation from violations of their rights by the States. In exercising that power, then, Congress may use "all means which are appropriate, which are plainly adapted" to the constitutional ends declared by these Amendments. *McCulloch*, 4 Wheat., at 421. So when Congress acts to enforce the right to vote free from racial discrimination, we ask not whether Congress has chosen the means most wise, but whether Congress has rationally selected means appropriate to a legitimate end. "It is not for us to review the congressional resolution of [the need for its chosen remedy]. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did." *Katzenbach* v. *Morgan*, 384 U. S. 641, 653 (1966).

Until today, in considering the constitutionality of the VRA, the Court has accorded Congress the full measure of respect its judgments in this domain should garner. *South Carolina* v. *Katzenbach* supplies the standard of review:

"As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting." 383 U. S., at 324. Faced with subsequent reauthorizations of the VRA, the Court has reaffirmed this standard. *E.g., City of Rome*, 446 U. S., at 178. Today's Court does not purport to alter settled precedent establishing that the dispositive question is whether Congress has employed "rational means."

For three reasons, legislation *re*authorizing an existing statute is especially likely to satisfy the minimal requirements of the rational-basis test. First, when reauthorization is at issue, Congress has already assembled a legislative record justifying the initial legislation. Congress is entitled to consider that preexisting record as well as the record before it at the time of the vote on reauthorization. This is especially true where, as here, the Court has repeatedly affirmed the statute's constitutionality and Congress has adhered to the very model the Court has upheld. See *id.*, at 174 ("The appellants are asking us to do nothing less than overrule our decision in *South Carolina* v. *Katzenbach* . . . , in which we upheld the constitutionality of the Act."); *Lopez* v. *Monterey County*, 525 U. S. 266, 283 (1999) (similar).

Second, the very fact that reauthorization is necessary arises because Congress has built a temporal limitation into the Act. It has pledged to review, after a span of years (first 15, then 25) and in light of contemporary evidence, the continued need for the VRA. Cf. *Grutter* v. *Bollinger*, 539 U. S. 306, 343 (2003) (anticipating, but not guaranteeing, that, in 25 years, "the use of racial preferences [in higher education] will no longer be necessary").

Third, a reviewing court should expect the record supporting reauthorization to be less stark than the record originally made. Demand for a record of violations equivalent to the one earlier made would expose Congress to a

catch-22. If the statute was working, there would be less evidence of discrimination, so opponents might argue that Congress should not be allowed to renew the statute. In contrast, if the statute was not working, there would be plenty of evidence of discrimination, but scant reason to renew a failed regulatory regime. See Persily 193–194.

This is not to suggest that congressional power in this area is limitless. It is this Court's responsibility to ensure that Congress has used appropriate means. The question meet for judicial review is whether the chosen means are "adapted to carry out the objects the amendments have in view." *Ex parte Virginia*, 100 U. S. 339, 346 (1880). The Court's role, then, is not to substitute its judgment for that of Congress, but to determine whether the legislative record sufficed to show that "Congress could rationally have determined that [its chosen] provisions were appropriate methods." *City of Rome*, 446 U. S., at 176–177.

In summary, the Constitution vests broad power in Congress to protect the right to vote, and in particular to combat racial discrimination in voting. This Court has repeatedly reaffirmed Congress' prerogative to use any rational means in exercise of its power in this area. And both precedent and logic dictate that the rational-means test should be easier to satisfy, and the burden on the statute's challenger should be higher, when what is at issue is the reauthorization of a remedy that the Court has previously affirmed, and that Congress found, from contemporary evidence, to be working to advance the legislature's legitimate objective.

III

The 2006 reauthorization of the Voting Rights Act fully satisfies the standard stated in *McCulloch*, 4 Wheat., at 421: Congress may choose any means "appropriate" and "plainly adapted to" a legitimate constitutional end. As we shall see, it is implausible to suggest otherwise.

A

I begin with the evidence on which Congress based its decision to continue the preclearance remedy. The surest way to evaluate whether that remedy remains in order is to see if preclearance is still effectively preventing discriminatory changes to voting laws. See *City of Rome*, 446 U. S., at 181 (identifying "information on the number and types of submissions made by covered jurisdictions and the number and nature of objections interposed by the Attorney General" as a primary basis for upholding the 1975 reauthorization). On that score, the record before Congress was huge. In fact, Congress found there were *more* DOJ objections between 1982 and 2004 (626) than there were between 1965 and the 1982 reauthorization (490). 1 Voting Rights Act: Evidence of Continued Need, Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 109th Cong., 2d Sess., p. 172 (2006) (hereinafter Evidence of Continued Need).

All told, between 1982 and 2006, DOJ objections blocked over 700 voting changes based on a determination that the changes were discriminatory. H. R. Rep. No. 109–478, at 21. Congress found that the majority of DOJ objections included findings of discriminatory intent, see 679 F. 3d, at 867, and that the changes blocked by preclearance were "calculated decisions to keep minority voters from fully participating in the political process." H. R. Rep. 109–478, at 21. On top of that, over the same time period the DOJ and private plaintiffs succeeded in more than 100 actions to enforce the §5 preclearance requirements. 1 Evidence of Continued Need 186, 250.

In addition to blocking proposed voting changes through preclearance, DOJ may request more information from a jurisdiction proposing a change. In turn, the jurisdiction may modify or withdraw the proposed change. The number of such modifications or withdrawals provides an

indication of how many discriminatory proposals are deterred without need for formal objection. Congress received evidence that more than 800 proposed changes were altered or withdrawn since the last reauthorization in 1982. H. R. Rep. No. 109–478, at 40–41.[4] Congress also received empirical studies finding that DOJ's requests for more information had a significant effect on the degree to which covered jurisdictions "compl[ied] with their obligatio[n]" to protect minority voting rights. 2 Evidence of Continued Need 2555.

Congress also received evidence that litigation under §2 of the VRA was an inadequate substitute for preclearance in the covered jurisdictions. Litigation occurs only after the fact, when the illegal voting scheme has already been put in place and individuals have been elected pursuant to it, thereby gaining the advantages of incumbency. 1 Evidence of Continued Need 97. An illegal scheme might be in place for several election cycles before a §2 plaintiff can gather sufficient evidence to challenge it. 1 Voting Rights Act: Section 5 of the Act—History, Scope, and Purpose: Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 109th Cong., 1st Sess., p. 92 (2005) (hereinafter Section 5 Hearing). And litigation places a heavy financial burden on minority voters. See *id.,* at 84. Congress also received evidence

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[4]This number includes only changes actually proposed. Congress also received evidence that many covered jurisdictions engaged in an "informal consultation process" with DOJ before formally submitting a proposal, so that the deterrent effect of preclearance was far broader than the formal submissions alone suggest. The Continuing Need for Section 5 Pre-Clearance: Hearing before the Senate Committee on the Judiciary, 109th Cong., 2d Sess., pp. 53–54 (2006). All agree that an unsupported assertion about "deterrence" would not be sufficient to justify keeping a remedy in place in perpetuity. See *ante*, at 17. But it was certainly reasonable for Congress to consider the testimony of witnesses who had worked with officials in covered jurisdictions and observed a real-world deterrent effect.

that preclearance lessened the litigation burden on covered jurisdictions themselves, because the preclearance process is far less costly than defending against a §2 claim, and clearance by DOJ substantially reduces the likelihood that a §2 claim will be mounted. Reauthorizing the Voting Rights Act's Temporary Provisions: Policy Perspectives and Views From the Field: Hearing before the Subcommittee on the Constitution, Civil Rights and Property Rights of the Senate Committee on the Judiciary, 109th Cong., 2d Sess., pp. 13, 120–121 (2006). See also Brief for States of New York, California, Mississippi, and North Carolina as *Amici Curiae* 8–9 (Section 5 "reduc[es] the likelihood that a jurisdiction will face costly and protracted Section 2 litigation").

The number of discriminatory changes blocked or deterred by the preclearance requirement suggests that the state of voting rights in the covered jurisdictions would have been significantly different absent this remedy. Surveying the type of changes stopped by the preclearance procedure conveys a sense of the extent to which §5 continues to protect minority voting rights. Set out below are characteristic examples of changes blocked in the years leading up to the 2006 reauthorization:

- In 1995, Mississippi sought to reenact a dual voter registration system, "which was initially enacted in 1892 to disenfranchise Black voters," and for that reason, was struck down by a federal court in 1987. H. R. Rep. No. 109–478, at 39.
- Following the 2000 census, the City of Albany, Georgia, proposed a redistricting plan that DOJ found to be "designed with the purpose to limit and retrogress the increased black voting strength . . . in the city as a whole." *Id.*, at 37 (internal quotation marks omitted).

- In 2001, the mayor and all-white five-member Board of Aldermen of Kilmichael, Mississippi, abruptly canceled the town's election after "an unprecedented number" of African-American candidates announced they were running for office. DOJ required an election, and the town elected its first black mayor and three black aldermen. *Id.,* at 36–37.

- In 2006, this Court found that Texas' attempt to redraw a congressional district to reduce the strength of Latino voters bore "the mark of intentional discrimination that could give rise to an equal protection violation," and ordered the district redrawn in compliance with the VRA. *League of United Latin American Citizens* v. *Perry*, 548 U. S. 399, 440 (2006). In response, Texas sought to undermine this Court's order by curtailing early voting in the district, but was blocked by an action to enforce the §5 preclearance requirement. See Order in *League of United Latin American Citizens* v. *Texas*, No. 06–cv–1046 (WD Tex.), Doc. 8.

- In 2003, after African-Americans won a majority of the seats on the school board for the first time in history, Charleston County, South Carolina, proposed an at-large voting mechanism for the board. The proposal, made without consulting any of the African-American members of the school board, was found to be an "'exact replica'" of an earlier voting scheme that, a federal court had determined, violated the VRA. 811 F. Supp. 2d 424, 483 (DDC 2011). See also S. Rep. No. 109–295, at 309. DOJ invoked §5 to block the proposal.

- In 1993, the City of Millen, Georgia, proposed to delay the election in a majority-black district by two

years, leaving that district without representation on the city council while the neighboring majority-white district would have three representatives. 1 Section 5 Hearing 744. DOJ blocked the proposal. The county then sought to move a polling place from a predominantly black neighborhood in the city to an inaccessible location in a predominantly white neighborhood outside city limits. *Id.,* at 816.

- In 2004, Waller County, Texas, threatened to prosecute two black students after they announced their intention to run for office. The county then attempted to reduce the availability of early voting in that election at polling places near a historically black university. 679 F. 3d, at 865–866.
- In 1990, Dallas County, Alabama, whose county seat is the City of Selma, sought to purge its voter rolls of many black voters. DOJ rejected the purge as discriminatory, noting that it would have disqualified many citizens from voting "simply because they failed to pick up or return a voter update form, when there was no valid requirement that they do so." 1 Section 5 Hearing 356.

These examples, and scores more like them, fill the pages of the legislative record. The evidence was indeed sufficient to support Congress' conclusion that "racial discrimination in voting in covered jurisdictions [remained] serious and pervasive." 679 F. 3d, at 865.[5]

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[5] For an illustration postdating the 2006 reauthorization, see *South Carolina* v. *United States*, 898 F. Supp. 2d 30 (DC 2012), which involved a South Carolina voter-identification law enacted in 2011. Concerned that the law would burden minority voters, DOJ brought a §5 enforcement action to block the law's implementation. In the course of the litigation, South Carolina officials agreed to binding interpretations that made it "far easier than some might have expected or feared" for South Carolina citizens to vote. *Id.*, at 37. A three-judge panel

Congress further received evidence indicating that formal requests of the kind set out above represented only the tip of the iceberg. There was what one commentator described as an "avalanche of case studies of voting rights violations in the covered jurisdictions," ranging from "outright intimidation and violence against minority voters" to "more subtle forms of voting rights deprivations." Persily 202 (footnote omitted). This evidence gave Congress ever more reason to conclude that the time had not yet come for relaxed vigilance against the scourge of race discrimination in voting.

True, conditions in the South have impressively improved since passage of the Voting Rights Act. Congress noted this improvement and found that the VRA was the driving force behind it. 2006 Reauthorization §2(b)(1). But Congress also found that voting discrimination had evolved into subtler second-generation barriers, and that eliminating preclearance would risk loss of the gains that had been made. §§2(b)(2), (9). Concerns of this order, the Court previously found, gave Congress adequate cause to reauthorize the VRA. *City of Rome*, 446 U. S., at 180–182 (congressional reauthorization of the preclearance requirement was justified based on "the number and nature of objections interposed by the Attorney General" since the prior reauthorization; extension was "necessary to preserve the limited and fragile achievements of the Act and to promote further amelioration of voting discrimination") (internal quotation marks omitted). Facing such evidence then, the Court expressly rejected the argument that disparities in voter turnout and number of elected officials

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precleared the law after adopting both interpretations as an express "condition of preclearance." *Id.,* at 37–38. Two of the judges commented that the case demonstrated "the continuing utility of Section 5 of the Voting Rights Act in deterring problematic, and hence encouraging non-discriminatory, changes in state and local voting laws." *Id.,* at 54 (opinion of Bates, J.).

were the only metrics capable of justifying reauthorization of the VRA. *Ibid.*

B

I turn next to the evidence on which Congress based its decision to reauthorize the coverage formula in §4(b). Because Congress did not alter the coverage formula, the same jurisdictions previously subject to preclearance continue to be covered by this remedy. The evidence just described, of preclearance's continuing efficacy in blocking constitutional violations in the covered jurisdictions, itself grounded Congress' conclusion that the remedy should be retained for those jurisdictions.

There is no question, moreover, that the covered jurisdictions have a unique history of problems with racial discrimination in voting. *Ante*, at 12–13. Consideration of this long history, still in living memory, was altogether appropriate. The Court criticizes Congress for failing to recognize that "history did not end in 1965." *Ante*, at 20. But the Court ignores that "what's past is prologue." W. Shakespeare, The Tempest, act 2, sc. 1. And "[t]hose who cannot remember the past are condemned to repeat it." 1 G. Santayana, The Life of Reason 284 (1905). Congress was especially mindful of the need to reinforce the gains already made and to prevent backsliding. 2006 Reauthorization §2(b)(9).

Of particular importance, even after 40 years and thousands of discriminatory changes blocked by preclearance, conditions in the covered jurisdictions demonstrated that the formula was still justified by "current needs." *Northwest Austin*, 557 U. S., at 203.

Congress learned of these conditions through a report, known as the Katz study, that looked at §2 suits between 1982 and 2004. To Examine the Impact and Effectiveness of the Voting Rights Act: Hearing before the Subcommittee on the Constitution of the House Committee on the

Judiciary, 109th Cong., 1st Sess., pp. 964–1124 (2005) (hereinafter Impact and Effectiveness). Because the private right of action authorized by §2 of the VRA applies nationwide, a comparison of §2 lawsuits in covered and noncovered jurisdictions provides an appropriate yardstick for measuring differences between covered and noncovered jurisdictions. If differences in the risk of voting discrimination between covered and noncovered jurisdictions had disappeared, one would expect that the rate of successful §2 lawsuits would be roughly the same in both areas.[6] The study's findings, however, indicated that racial discrimination in voting remains "concentrated in the jurisdictions singled out for preclearance." *Northwest Austin*, 557 U. S., at 203.

Although covered jurisdictions account for less than 25 percent of the country's population, the Katz study revealed that they accounted for 56 percent of successful §2 litigation since 1982. Impact and Effectiveness 974. Controlling for population, there were nearly *four* times as many successful §2 cases in covered jurisdictions as there were in noncovered jurisdictions. 679 F. 3d, at 874. The Katz study further found that §2 lawsuits are more likely to succeed when they are filed in covered jurisdictions than in noncovered jurisdictions. Impact and Effectiveness 974. From these findings—ignored by the Court—Congress reasonably concluded that the coverage formula continues to identify the jurisdictions of greatest concern.

The evidence before Congress, furthermore, indicated that voting in the covered jurisdictions was more racially polarized than elsewhere in the country. H. R. Rep. No. 109–478, at 34–35. While racially polarized voting alone

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[6] Because preclearance occurs only in covered jurisdictions and can be expected to stop the most obviously objectionable measures, one would expect a *lower* rate of successful §2 lawsuits in those jurisdictions if the risk of voting discrimination there were the same as elsewhere in the country.

does not signal a constitutional violation, it is a factor that increases the vulnerability of racial minorities to discriminatory changes in voting law. The reason is twofold. First, racial polarization means that racial minorities are at risk of being systematically outvoted and having their interests underrepresented in legislatures. Second, "when political preferences fall along racial lines, the natural inclinations of incumbents and ruling parties to entrench themselves have predictable racial effects. Under circumstances of severe racial polarization, efforts to gain political advantage translate into race-specific disadvantages." Ansolabehere, Persily, & Stewart, Regional Differences in Racial Polarization in the 2012 Presidential Election: Implications for the Constitutionality of Section 5 of the Voting Rights Act, 126 Harv. L. Rev. Forum 205, 209 (2013).

In other words, a governing political coalition has an incentive to prevent changes in the existing balance of voting power. When voting is racially polarized, efforts by the ruling party to pursue that incentive "will inevitably discriminate against a racial group." *Ibid.* Just as buildings in California have a greater need to be earthquake-proofed, places where there is greater racial polarization in voting have a greater need for prophylactic measures to prevent purposeful race discrimination. This point was understood by Congress and is well recognized in the academic literature. See 2006 Reauthorization §2(b)(3), 120 Stat. 577 ("The continued evidence of racially polarized voting in each of the jurisdictions covered by the [preclearance requirement] demonstrates that racial and language minorities remain politically vulnerable"); H. R. Rep. No. 109–478, at 35; Davidson, The Recent Evolution of Voting Rights Law Affecting Racial and Language Minorities, in Quiet Revolution 21, 22.

The case for retaining a coverage formula that met needs on the ground was therefore solid. Congress might

have been charged with rigidity had it afforded covered jurisdictions no way out or ignored jurisdictions that needed superintendence. Congress, however, responded to this concern. Critical components of the congressional design are the statutory provisions allowing jurisdictions to "bail out" of preclearance, and for court-ordered "bail ins." See *Northwest Austin*, 557 U. S., at 199. The VRA permits a jurisdiction to bail out by showing that it has complied with the Act for ten years, and has engaged in efforts to eliminate intimidation and harassment of voters. 42 U. S. C. §1973b(a) (2006 ed. and Supp. V). It also authorizes a court to subject a noncovered jurisdiction to federal preclearance upon finding that violations of the Fourteenth and Fifteenth Amendments have occurred there. §1973a(c) (2006 ed.).

Congress was satisfied that the VRA's bailout mechanism provided an effective means of adjusting the VRA's coverage over time. H. R. Rep. No. 109–478, at 25 (the success of bailout "illustrates that: (1) covered status is neither permanent nor over-broad; and (2) covered status has been and continues to be within the control of the jurisdiction such that those jurisdictions that have a genuinely clean record and want to terminate coverage have the ability to do so"). Nearly 200 jurisdictions have successfully bailed out of the preclearance requirement, and DOJ has consented to every bailout application filed by an eligible jurisdiction since the current bailout procedure became effective in 1984. Brief for Federal Respondent 54. The bail-in mechanism has also worked. Several jurisdictions have been subject to federal preclearance by court orders, including the States of New Mexico and Arkansas. App. to Brief for Federal Respondent 1a–3a.

This experience exposes the inaccuracy of the Court's portrayal of the Act as static, unchanged since 1965. Congress designed the VRA to be a dynamic statute, capable of adjusting to changing conditions. True, many cov-

ered jurisdictions have not been able to bail out due to recent acts of noncompliance with the VRA, but that truth reinforces the congressional judgment that these jurisdictions were rightfully subject to preclearance, and ought to remain under that regime.

IV

Congress approached the 2006 reauthorization of the VRA with great care and seriousness. The same cannot be said of the Court's opinion today. The Court makes no genuine attempt to engage with the massive legislative record that Congress assembled. Instead, it relies on increases in voter registration and turnout as if that were the whole story. See *supra,* at 18–19. Without even identifying a standard of review, the Court dismissively brushes off arguments based on "data from the record," and declines to enter the "debat[e about] what [the] record shows." *Ante*, at 20–21. One would expect more from an opinion striking at the heart of the Nation's signal piece of civil-rights legislation.

I note the most disturbing lapses. First, by what right, given its usual restraint, does the Court even address Shelby County's facial challenge to the VRA? Second, the Court veers away from controlling precedent regarding the "equal sovereignty" doctrine without even acknowledging that it is doing so. Third, hardly showing the respect ordinarily paid when Congress acts to implement the Civil War Amendments, and as just stressed, the Court does not even deign to grapple with the legislative record.

A

Shelby County launched a purely facial challenge to the VRA's 2006 reauthorization. "A facial challenge to a legislative Act," the Court has other times said, "is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circum-

stances exists under which the Act would be valid." *United States* v. *Salerno*, 481 U. S. 739, 745 (1987).

"[U]nder our constitutional system[,] courts are not roving commissions assigned to pass judgment on the validity of the Nation's laws." *Broadrick* v. *Oklahoma*, 413 U. S. 601, 610–611 (1973). Instead, the "judicial Power" is limited to deciding particular "Cases" and "Controversies." U. S. Const., Art. III, §2. "Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in other situations not before the Court." *Broadrick*, 413 U. S., at 610. Yet the Court's opinion in this case contains not a word explaining why Congress lacks the power to subject to preclearance the particular plaintiff that initiated this lawsuit—Shelby County, Alabama. The reason for the Court's silence is apparent, for as applied to Shelby County, the VRA's preclearance requirement is hardly contestable.

Alabama is home to Selma, site of the "Bloody Sunday" beatings of civil-rights demonstrators that served as the catalyst for the VRA's enactment. Following those events, Martin Luther King, Jr., led a march from Selma to Montgomery, Alabama's capital, where he called for passage of the VRA. If the Act passed, he foresaw, progress could be made even in Alabama, but there had to be a steadfast national commitment to see the task through to completion. In King's words, "the arc of the moral universe is long, but it bends toward justice." G. May, Bending Toward Justice: The Voting Rights Act and the Transformation of American Democracy 144 (2013).

History has proved King right. Although circumstances in Alabama have changed, serious concerns remain. Between 1982 and 2005, Alabama had one of the highest rates of successful §2 suits, second only to its VRA-covered

neighbor Mississippi. 679 F. 3d, at 897 (Williams, J., dissenting). In other words, even while subject to the restraining effect of §5, Alabama was found to have "deni[ed] or abridge[d]" voting rights "on account of race or color" more frequently than nearly all other States in the Union. 42 U. S. C. §1973(a). This fact prompted the dissenting judge below to concede that "a more narrowly tailored coverage formula" capturing Alabama and a handful of other jurisdictions with an established track record of racial discrimination in voting "might be defensible." 679 F. 3d, at 897 (opinion of Williams, J.). That is an understatement. Alabama's sorry history of §2 violations alone provides sufficient justification for Congress' determination in 2006 that the State should remain subject to §5's preclearance requirement.[7]

A few examples suffice to demonstrate that, at least in Alabama, the "current burdens" imposed by §5's preclearance requirement are "justified by current needs." *Northwest Austin*, 557 U. S., at 203. In the interim between the VRA's 1982 and 2006 reauthorizations, this Court twice confronted purposeful racial discrimination in Alabama. In *Pleasant Grove* v. *United States*, 479 U. S. 462 (1987), the Court held that Pleasant Grove—a city in Jefferson County, Shelby County's neighbor—engaged in purposeful discrimination by annexing all-white areas while rejecting the annexation request of an adjacent black neighborhood. The city had "shown unambiguous opposition to racial

[7]This lawsuit was filed by Shelby County, a political subdivision of Alabama, rather than by the State itself. Nevertheless, it is appropriate to judge Shelby County's constitutional challenge in light of instances of discrimination statewide because Shelby County is subject to §5's preclearance requirement by virtue of *Alabama's* designation as a covered jurisdiction under §4(b) of the VRA. See *ante*, at 7. In any event, Shelby County's recent record of employing an at-large electoral system tainted by intentional racial discrimination is by itself sufficient to justify subjecting the county to §5's preclearance mandate. See *infra*, at 26.

integration, both before and after the passage of the federal civil rights laws," and its strategic annexations appeared to be an attempt "to provide for the growth of a monolithic white voting block" for "the impermissible purpose of minimizing future black voting strength." *Id.*, at 465, 471–472.

Two years before *Pleasant Grove*, the Court in *Hunter* v. *Underwood*, 471 U. S. 222 (1985), struck down a provision of the Alabama Constitution that prohibited individuals convicted of misdemeanor offenses "involving moral turpitude" from voting. *Id.*, at 223 (internal quotation marks omitted). The provision violated the Fourteenth Amendment's Equal Protection Clause, the Court unanimously concluded, because "its original enactment was motivated by a desire to discriminate against blacks on account of race[,] and the [provision] continues to this day to have that effect." *Id.*, at 233.

Pleasant Grove and *Hunter* were not anomalies. In 1986, a Federal District Judge concluded that the at-large election systems in several Alabama counties violated §2. *Dillard* v. *Crenshaw Cty.*, 640 F. Supp. 1347, 1354–1363 (MD Ala. 1986). Summarizing its findings, the court stated that "[f]rom the late 1800's through the present, [Alabama] has consistently erected barriers to keep black persons from full and equal participation in the social, economic, and political life of the state." *Id.*, at 1360.

The *Dillard* litigation ultimately expanded to include 183 cities, counties, and school boards employing discriminatory at-large election systems. *Dillard* v. *Baldwin Cty. Bd. of Ed.*, 686 F. Supp. 1459, 1461 (MD Ala. 1988). One of those defendants was Shelby County, which eventually signed a consent decree to resolve the claims against it. See *Dillard* v. *Crenshaw Cty.*, 748 F. Supp. 819 (MD Ala. 1990).

Although the *Dillard* litigation resulted in overhauls of numerous electoral systems tainted by racial discrimina-

tion, concerns about backsliding persist. In 2008, for example, the city of Calera, located in Shelby County, requested preclearance of a redistricting plan that "would have eliminated the city's sole majority-black district, which had been created pursuant to the consent decree in *Dillard*." 811 F. Supp. 2d 424, 443 (DC 2011). Although DOJ objected to the plan, Calera forged ahead with elections based on the unprecleared voting changes, resulting in the defeat of the incumbent African-American councilman who represented the former majority-black district. *Ibid.* The city's defiance required DOJ to bring a §5 enforcement action that ultimately yielded appropriate redress, including restoration of the majority-black district. *Ibid.*; Brief for Respondent-Intervenors Earl Cunningham et al. 20.

A recent FBI investigation provides a further window into the persistence of racial discrimination in state politics. See *United States* v. *McGregor*, 824 F. Supp. 2d 1339, 1344–1348 (MD Ala. 2011). Recording devices worn by state legislators cooperating with the FBI's investigation captured conversations between members of the state legislature and their political allies. The recorded conversations are shocking. Members of the state Senate derisively refer to African-Americans as "Aborigines" and talk openly of their aim to quash a particular gambling-related referendum because the referendum, if placed on the ballot, might increase African-American voter turnout. *Id.*, at 1345–1346 (internal quotation marks omitted). See also *id.*, at 1345 (legislators and their allies expressed concern that if the referendum were placed on the ballot, "'[e]very black, every illiterate' would be 'bused [to the polls] on HUD financed buses'"). These conversations occurred not in the 1870's, or even in the 1960's, they took place in 2010. *Id.*, at 1344–1345. The District Judge presiding over the criminal trial at which the recorded conversations were introduced commented that the "re-

cordings represent compelling evidence that political exclusion through racism remains a real and enduring problem" in Alabama. *Id.*, at 1347. Racist sentiments, the judge observed, "remain regrettably entrenched in the high echelons of state government." *Ibid.*

These recent episodes forcefully demonstrate that §5's preclearance requirement is constitutional as applied to Alabama and its political subdivisions.[8] And under our case law, that conclusion should suffice to resolve this case. See *United States* v. *Raines*, 362 U. S. 17, 24–25 (1960) ("[I]f the complaint here called for an application of the statute clearly constitutional under the Fifteenth Amendment, that should have been an end to the question of constitutionality."). See also *Nevada Dept. of Human Resources* v. *Hibbs*, 538 U. S. 721, 743 (2003) (SCALIA, J., dissenting) (where, as here, a state or local government raises a facial challenge to a federal statute on the ground that it exceeds Congress' enforcement powers under the Civil War Amendments, the challenge fails if the opposing party is able to show that the statute "could constitutionally be applied to *some* jurisdictions").

This Court has consistently rejected constitutional challenges to legislation enacted pursuant to Congress' enforcement powers under the Civil War Amendments upon finding that the legislation was constitutional as applied to the particular set of circumstances before the Court. See *United States* v. *Georgia*, 546 U. S. 151, 159 (2006) (Title II of the Americans with Disabilities Act of 1990 (ADA) validly abrogates state sovereign immunity "insofar as [it] creates a private cause of action . . . for conduct that *actually* violates the Fourteenth Amend-

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[8] Congress continued preclearance over Alabama, including Shelby County, *after* considering evidence of current barriers there to minority voting clout. Shelby County, thus, is no "redhead" caught up in an arbitrary scheme. See *ante*, at 22.

ment"); *Tennessee* v. *Lane*, 541 U. S. 509, 530–534 (2004) (Title II of the ADA is constitutional "as it applies to the class of cases implicating the fundamental right of access to the courts"); *Raines*, 362 U. S., at 24–26 (federal statute proscribing deprivations of the right to vote based on race was constitutional as applied to the state officials before the Court, even if it could not constitutionally be applied to other parties). A similar approach is warranted here.[9]

The VRA's exceptionally broad severability provision makes it particularly inappropriate for the Court to allow Shelby County to mount a facial challenge to §§4(b) and 5 of the VRA, even though application of those provisions to the county falls well within the bounds of Congress' legislative authority. The severability provision states:

> "If any provision of [this Act] or the application thereof to any person or circumstances is held invalid, the remainder of [the Act] and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby." 42 U. S. C. §1973p.

In other words, even if the VRA could not constitutionally be applied to certain States—*e.g.*, Arizona and Alaska, see *ante*, at 8—§1973p calls for those unconstitutional applications to be severed, leaving the Act in place for jurisdictions as to which its application does not transgress constitutional limits.

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[9] The Court does not contest that Alabama's history of racial discrimination provides a sufficient basis for Congress to require Alabama and its political subdivisions to preclear electoral changes. Nevertheless, the Court asserts that Shelby County may prevail on its facial challenge to §4's coverage formula because it is subject to §5's preclearance requirement by virtue of that formula. See *ante*, at 22 ("The county was selected [for preclearance] based on th[e] [coverage] formula."). This misses the reality that Congress decided to subject Alabama to preclearance based on evidence of continuing constitutional violations in that State. See *supra*, at 28, n. 8.

Nevertheless, the Court suggests that limiting the jurisdictional scope of the VRA in an appropriate case would be "to try our hand at updating the statute." *Ante*, at 22. Just last Term, however, the Court rejected this very argument when addressing a materially identical severability provision, explaining that such a provision is "Congress' explicit textual instruction to leave unaffected the remainder of [the Act]" if any particular "application is unconstitutional." *National Federation of Independent Business* v. *Sebelius*, 567 U. S. __, __ (2012) (plurality opinion) (slip op., at 56) (internal quotation marks omitted); *id.,* at __ (GINSBURG, J., concurring in part, concurring in judgment in part, and dissenting in part) (slip op., at 60) (agreeing with the plurality's severability analysis). See also *Raines*, 362 U. S., at 23 (a statute capable of some constitutional applications may nonetheless be susceptible to a facial challenge only in "that rarest of cases where this Court can justifiably think itself able confidently to discern that Congress would not have desired its legislation to stand at all unless it could validly stand in its every application"). Leaping to resolve Shelby County's facial challenge without considering whether application of the VRA to Shelby County is constitutional, or even addressing the VRA's severability provision, the Court's opinion can hardly be described as an exemplar of restrained and moderate decisionmaking. Quite the opposite. Hubris is a fit word for today's demolition of the VRA.

B

The Court stops any application of §5 by holding that §4(b)'s coverage formula is unconstitutional. It pins this result, in large measure, to "the fundamental principle of equal sovereignty." *Ante*, at 10–11, 23. In *Katzenbach*, however, the Court held, in no uncertain terms, that the principle "*applies only to the terms upon which States are admitted to the Union*, and not to the remedies for local

evils which have subsequently appeared." 383 U. S., at 328–329 (emphasis added).

Katzenbach, the Court acknowledges, "rejected the notion that the [equal sovereignty] principle operate[s] as a bar on differential treatment outside [the] context [of the admission of new States]." *Ante*, at 11 (citing 383 U. S., at 328–329) (emphasis omitted). But the Court clouds that once clear understanding by citing dictum from *Northwest Austin* to convey that the principle of equal sovereignty "remains highly pertinent in assessing subsequent disparate treatment of States." *Ante*, at 11 (citing 557 U. S., at 203). See also *ante*, at 23 (relying on *Northwest Austin*'s "emphasis on [the] significance" of the equal-sovereignty principle). If the Court is suggesting that dictum in *Northwest Austin* silently overruled *Katzenbach*'s limitation of the equal sovereignty doctrine to "the admission of new States," the suggestion is untenable. *Northwest Austin* cited *Katzenbach*'s holding in the course of *declining to decide* whether the VRA was constitutional or even what standard of review applied to the question. 557 U. S., at 203–204. In today's decision, the Court ratchets up what was pure dictum in *Northwest Austin*, attributing breadth to the equal sovereignty principle in flat contradiction of *Katzenbach*. The Court does so with nary an explanation of why it finds *Katzenbach* wrong, let alone any discussion of whether *stare decisis* nonetheless counsels adherence to *Katzenbach*'s ruling on the limited "significance" of the equal sovereignty principle.

Today's unprecedented extension of the equal sovereignty principle outside its proper domain—the admission of new States—is capable of much mischief. Federal statutes that treat States disparately are hardly novelties. See, *e.g.,* 28 U. S. C. §3704 (no State may operate or permit a sports-related gambling scheme, unless that State conducted such a scheme "at any time during the period beginning January 1, 1976, and ending August 31, 1990");

26 U. S. C. §142(*l*) (EPA required to locate green building project in a State meeting specified population criteria); 42 U. S. C. §3796bb (at least 50 percent of rural drug enforcement assistance funding must be allocated to States with "a population density of fifty-two or fewer persons per square mile or a State in which the largest county has fewer than one hundred and fifty thousand people, based on the decennial census of 1990 through fiscal year 1997"); §§13925, 13971 (similar population criteria for funding to combat rural domestic violence); §10136 (specifying rules applicable to Nevada's Yucca Mountain nuclear waste site, and providing that "[n]o State, other than the State of Nevada, may receive financial assistance under this subsection after December 22, 1987"). Do such provisions remain safe given the Court's expansion of equal sovereignty's sway?

Of gravest concern, Congress relied on our pathmarking *Katzenbach* decision in each reauthorization of the VRA. It had every reason to believe that the Act's limited geographical scope would weigh in favor of, not against, the Act's constitutionality. See, *e.g., United States* v. *Morrison*, 529 U. S. 598, 626–627 (2000) (confining preclearance regime to States with a record of discrimination bolstered the VRA's constitutionality). Congress could hardly have foreseen that the VRA's limited geographic reach would render the Act constitutionally suspect. See Persily 195 ("[S]upporters of the Act sought to develop an evidentiary record for the principal purpose of explaining why the covered jurisdictions should remain covered, rather than justifying the coverage of certain jurisdictions but not others.").

In the Court's conception, it appears, defenders of the VRA could not prevail upon showing what the record overwhelmingly bears out, *i.e.*, that there is a need for continuing the preclearance regime in covered States. In addition, the defenders would have to disprove the exist-

ence of a comparable need elsewhere. See Tr. of Oral Arg. 61–62 (suggesting that proof of egregious episodes of racial discrimination in covered jurisdictions would not suffice to carry the day for the VRA, unless such episodes are shown to be absent elsewhere). I am aware of no precedent for imposing such a double burden on defenders of legislation.

C

The Court has time and again declined to upset legislation of this genre unless there was no or almost no evidence of unconstitutional action by States. See, *e.g., City of Boerne* v. *Flores*, 521 U. S. 507, 530 (1997) (legislative record "mention[ed] no episodes [of the kind the legislation aimed to check] occurring in the past 40 years"). No such claim can be made about the congressional record for the 2006 VRA reauthorization. Given a record replete with examples of denial or abridgment of a paramount federal right, the Court should have left the matter where it belongs: in Congress' bailiwick.

Instead, the Court strikes §4(b)'s coverage provision because, in its view, the provision is not based on "current conditions." *Ante*, at 17. It discounts, however, that one such condition was the preclearance remedy in place in the covered jurisdictions, a remedy Congress designed both to catch discrimination before it causes harm, and to guard against return to old ways. 2006 Reauthorization §2(b)(3), (9). Volumes of evidence supported Congress' determination that the prospect of retrogression was real. Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.

But, the Court insists, the coverage formula is no good; it is based on "decades-old data and eradicated practices." *Ante*, at 18. Even if the legislative record shows, as engaging with it would reveal, that the formula accurately

identifies the jurisdictions with the worst conditions of voting discrimination, that is of no moment, as the Court sees it. Congress, the Court decrees, must "star[t] from scratch." *Ante*, at 23. I do not see why that should be so.

Congress' chore was different in 1965 than it was in 2006. In 1965, there were a "small number of States . . . which in most instances were familiar to Congress by name," on which Congress fixed its attention. *Katzenbach*, 383 U. S., at 328. In drafting the coverage formula, "Congress began work with reliable evidence of actual voting discrimination in a great majority of the States" it sought to target. *Id.,* at 329. "The formula [Congress] eventually evolved to describe these areas" also captured a few States that had not been the subject of congressional factfinding. *Ibid.* Nevertheless, the Court upheld the formula in its entirety, finding it fair "to infer a significant danger of the evil" in all places the formula covered. *Ibid.*

The situation Congress faced in 2006, when it took up *re*authorization of the coverage formula, was not the same. By then, the formula had been in effect for many years, and *all* of the jurisdictions covered by it were "familiar to Congress by name." *Id.,* at 328. The question before Congress: Was there still a sufficient basis to support continued application of the preclearance remedy in each of those already-identified places? There was at that point no chance that the formula might inadvertently sweep in new areas that were not the subject of congressional findings. And Congress could determine from the record whether the jurisdictions captured by the coverage formula still belonged under the preclearance regime. If they did, there was no need to alter the formula. That is why the Court, in addressing prior reauthorizations of the VRA, did not question the continuing "relevance" of the formula.

Consider once again the components of the record before Congress in 2006. The coverage provision identified a

known list of places with an undisputed history of serious problems with racial discrimination in voting. Recent evidence relating to Alabama and its counties was there for all to see. Multiple Supreme Court decisions had upheld the coverage provision, most recently in 1999. There was extensive evidence that, due to the preclearance mechanism, conditions in the covered jurisdictions had notably improved. And there was evidence that preclearance was still having a substantial real-world effect, having stopped hundreds of discriminatory voting changes in the covered jurisdictions since the last reauthorization. In addition, there was evidence that racial polarization in voting was higher in covered jurisdictions than elsewhere, increasing the vulnerability of minority citizens in those jurisdictions. And countless witnesses, reports, and case studies documented continuing problems with voting discrimination in those jurisdictions. In light of this record, Congress had more than a reasonable basis to conclude that the existing coverage formula was not out of sync with conditions on the ground in covered areas. And certainly Shelby County was no candidate for release through the mechanism Congress provided. See *supra,* at 22–23, 26–28.

The Court holds §4(b) invalid on the ground that it is "irrational to base coverage on the use of voting tests 40 years ago, when such tests have been illegal since that time." *Ante*, at 23. But the Court disregards what Congress set about to do in enacting the VRA. That extraordinary legislation scarcely stopped at the particular tests and devices that happened to exist in 1965. The grand aim of the Act is to secure to all in our polity equal citizenship stature, a voice in our democracy undiluted by race. As the record for the 2006 reauthorization makes abundantly clear, second-generation barriers to minority voting rights have emerged in the covered jurisdictions as attempted *substitutes* for the first-generation barriers that

originally triggered preclearance in those jurisdictions. See *supra,* at 5–6, 8, 15–17.

The sad irony of today's decision lies in its utter failure to grasp why the VRA has proven effective. The Court appears to believe that the VRA's success in eliminating the specific devices extant in 1965 means that preclearance is no longer needed. *Ante*, at 21–22, 23–24. With that belief, and the argument derived from it, history repeats itself. The same assumption—that the problem could be solved when particular methods of voting discrimination are identified and eliminated—was indulged and proved wrong repeatedly prior to the VRA's enactment. Unlike prior statutes, which singled out particular tests or devices, the VRA is grounded in Congress' recognition of the "variety and persistence" of measures designed to impair minority voting rights. *Katzenbach*, 383 U. S., at 311; *supra,* at 2. In truth, the evolution of voting discrimination into more subtle second-generation barriers is powerful evidence that a remedy as effective as preclearance remains vital to protect minority voting rights and prevent backsliding.

Beyond question, the VRA is no ordinary legislation. It is extraordinary because Congress embarked on a mission long delayed and of extraordinary importance: to realize the purpose and promise of the Fifteenth Amendment. For a half century, a concerted effort has been made to end racial discrimination in voting. Thanks to the Voting Rights Act, progress once the subject of a dream has been achieved and continues to be made.

The record supporting the 2006 reauthorization of the VRA is also extraordinary. It was described by the Chairman of the House Judiciary Committee as "one of the most extensive considerations of any piece of legislation that the United States Congress has dealt with in the 27½ years" he had served in the House. 152 Cong. Rec. H5143 (July 13, 2006) (statement of Rep. Sensenbrenner).

After exhaustive evidence-gathering and deliberative process, Congress reauthorized the VRA, including the coverage provision, with overwhelming bipartisan support. It was the judgment of Congress that "40 years has not been a sufficient amount of time to eliminate the vestiges of discrimination following nearly 100 years of disregard for the dictates of the 15th amendment and to ensure that the right of all citizens to vote is protected as guaranteed by the Constitution." 2006 Reauthorization §2(b)(7), 120 Stat. 577. That determination of the body empowered to enforce the Civil War Amendments "by appropriate legislation" merits this Court's utmost respect. In my judgment, the Court errs egregiously by overriding Congress' decision.

* * *

For the reasons stated, I would affirm the judgment of the Court of Appeals.